

HISTORY OF MONTANA INCREMENT TRACKING ISSUES

7/94 – EPA letter to MT discusses need for increment tracking and provides examples of how this is done by other Region 8 states, e.g., OR, UT, and CO established statewide baseline dates for TSP, NO_x, and SO₂.

7/95 – EPA letter to MT approves 5/94 submittal of proposed SIP revisions. In accompanying Federal Register notice, EPA says action is non-controversial, and is consistent with Federal requirements. No discussion regarding changed definition of baseline area.

9/95 – EPA letter to MT notifying them of problem with baseline area determination. MT actions not consistent with either state or Federal regulations. MT is implementing baseline as the 1 ug/m³ impact area rather than statewide. EPA points out that to implement the program in this manner, each baseline area must be designated under section 107(d) of the CAA. State has to submit requests to EPA to approve such areas. State has not done so. Therefore, “rest of state” is considered baseline, and PM baseline was triggered in 1979. Says state can redesignate areas as small as it wants, with minimum of 1 ug/m³ impact area. However, State needs to provide a legal description and dispersion modeling that verifies impact area for each proposed baseline area, and submit to EPA for approval.

5/96 – MT letter to EPA says they have a different interpretation of the definition of baseline area. Present options to EPA for continuing to use the 1 ug/m³ impact area as the baseline area for all pollutants.

7/96 – EPA letter to MT reiterates EPA’s interpretation of baseline and describes process MT will have to follow to use MT’s preferred method. EPA says they consider PM, NO_x, and SO₂ baseline triggered for most of state. Admit that flexibility in redefining baseline is inherent in state’s authority to redesignate under section 107(d). Says they are not aware of any other states interpreting baseline as the 1 ug/m³ impact area.

10/96 – MT letter to EPA says they will formally ask EPA to redesignate areas now listed as “remainder of state” into countywide baseline areas. The request will define baseline areas for increment tracking. They intend to untrigger baseline areas (counties) without PSD activity. Next step will be to untrigger remainder of each county outside a 1 ug/m³ impact area. Ask EPA a number of questions regarding how change in facility operation could affect baseline dates.

11/96 – EPA letter to MT answers questions posed in last state letter. Says MT will have to go through a public process for the redesignation.

5/98 – MT letter to EPA provides draft redesignation package. Says increment-tracking area would consist of 10,000 m² blocks. Provides results of SCREEN3 modeling that shows the 1 ug/m³ impact area for each of the 18 PSD sources in MT and each pollutant.

Says they will do ISCST3 modeling for those sources showing a greater than 100 km impact area with SCREEN3.

- / 8/98 – EPA letter to MT expresses concern about the implications of using the 1 ug/m³ impact area as the baseline area. These concerns include: action will allow minor source emissions to become part of baseline in untriggered areas, leading to deterioration of air quality; could affect MT's ability to attain and maintain the new PM_{2.5} standard; could affect Class I areas (suggest MT consult with FLMs); would untrigger baseline for all tribal lands in MT; and could affect ability to comply with proposed regional haze regulations. EPA also provides a number of technical comments regarding the modeling.
- / 10/98 – EPA letter to MT provides summary of EPA's definition of baseline area and also provides historical context for MT's interpretation of baseline.
 - MT's 1983 PSD regulations adopted a statewide baseline date for SO₂ and a source impact area baseline for TSP.
 - In 1990 SIP revision, MT adopted a statewide baseline date for NO₂.
 - In EPA's 1991 approval of MT's proposed SIP revision, acknowledges that MT adopted the statewide baseline for NO₂.
 - In 1991, MT sent EPA a letter saying it intends to submit for redesignation of baseline on a countywide basis.
 - EPA couldn't find any indication that MT's 1993 PSD rule revisions intended to change the baseline area from statewide to the 1 ug/m³ impact area. MT did not submit a redesignation request.
- / 11/98 – Mitchell, Silva and Maniero participated on a conference call with MT, EPA, USFS, and other interested parties.
 - According to MT, EPA's major concern seems to be that MT's preferred definition of baseline area will allow for minor source growth and impacts. MT contends that PSD was never intended to control minor source growth.
 - MT thinks they will be able to track minor source increment consumption in "triggered" areas, i.e., those within the 1 ug/m³ impact area of a PSD source. They would do an annual increment tracking report for triggered areas.
 - We pointed out that SCREEN3 modeling greatly over-estimated the sizes of the impact areas, i.e., very few grids would be triggered. MT is now doing a refined impact analysis for all PSD sources.
 - MT prefers their interpretation of baseline and likes the idea of tracking increment near PSD sources only because statewide tracking would require additional staff.
 - MT is willing to consider alternatives that would be protective of Class I areas. We asked that they assess current increment consumption near all Class I areas. They don't feel they have the staff time to do this.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

9/14/95

Ref: 8ART-AP

Jeffrey T. Chaffee, Administrator
Air Quality Division
Department of Health and Environmental Sciences
P.O. Box 200901
Helena, Montana 59620-0901

Dear Jeff:

EPA has recently realized that the State of Montana has been administering its prevention of significant deterioration (PSD) permitting program regarding increments for particulate matter differently than the State's regulations (as well as EPA's regulations) would allow. Our files on the State's original adoption of the PSD permitting regulation indicate that the State intended to implement the increments for particulate matter based on a source impact baseline area (rather than an entire State baseline area), and it appears that the State has been implementing its program in this manner. Such a definition of baseline area is generally allowed under the Federal PSD regulations and would result in the minor source baseline date for particulate matter only being triggered in the 1 ug/m³ (annual average) impact area of the PSD source that triggered the particulate matter minor source baseline date. However, in order to legally implement the PSD program in this manner, the State needed to take further steps, as follows.

Specifically, the definition of "baseline area" (in both the State's PSD rules and the Federal PSD regulations) states that the area must be designated under section 107(d)(1)(D) or (E) of the Clean Air Act (Act). Thus, to implement the particulate matter minor source baseline date on a source impact area basis, the State should have been submitting requests to EPA to establish areas under section 107 of the Act encompassing the 1 ug/m³ impact area of each PSD source that established a particulate matter minor source baseline date. However, the State has not been submitting those requests. Areas designated under section 107(d) of the Act are codified in 40 CFR part 81 and, in Montana, except for those areas that were designated nonattainment for the total suspended particulate standards, the "rest of State" is considered to be the baseline area. EPA's records show that the particulate matter minor source baseline date for the "rest of State" area was triggered by the Asarco-Troy project on April 1, 1979.



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EPA has discussed this issue with your staff (who recently realized this discrepancy themselves). The purpose of this letter is to provide the State with guidance on how to address this issue. In order to implement the PSD program as originally intended, the Governor of Montana must submit requests, pursuant to section 107(d) of the Act, to redesignate the 1 ug/m^3 impact area of each PSD source that triggered the particulate matter minor source baseline date (i.e, each complete permit application submitted after the major source baseline date of August 7, 1977 for major sources which emitted (or would emit) significant amounts of particulate matter and for major modifications that would result in significant net emissions increases of particulate matter). Such requests must include a legal description of each 1 ug/m^3 impact area for which the State is requesting redesignation and must include dispersion modeling data that verify the calculation of the 1 ug/m^3 impact area(s). Area redesignations are subject to certain restrictions: 1) the boundaries of any area redesignated by a State cannot intersect the 1 ug/m^3 impact area of any major stationary source or major modification that established the minor source baseline date for the area proposed for redesignation; and 2) baseline area redesignations can be no smaller than the 1 ug/m^3 area of impact of such sources.

The State also has the option of redesignating the "rest of State" into larger areas, such as county by county or sections of counties. In fact, the State can redesignate areas as small or as large as it wants, as long as the two requirements listed above are adequately demonstrated to be met. In the long run, it may be easier for the State to redesignate county by county for particulate matter, because the State would not have to submit a section 107 request each time a new major source or major modification triggers a new particulate matter minor source baseline date. However, to redesignate to county by county, EPA would still need information on the impact areas of each PSD source whose complete permit application triggered a particulate matter minor source baseline date in order to ensure the two requirements listed above are met.

My staff has considerable experience in redesignating areas under section 107 of the Act for the purpose of untriggering the particulate matter minor source baseline date; we have processed two such requests from the State of Wyoming in recent years. Compiling such requests can be complicated and confusing, and we will gladly provide assistance to the State in this endeavor. The staff contact regarding such redesignations is Vicki Stamper, (303) 293-1765. Please have your staff contact her with any questions on redesignations or to have her review draft redesignation requests. If you have any questions on this matter, please contact me at (303) 293-1750.

Sincerely,


Douglas M. Skie, Chief
Air Programs Branch

cc: Charles Homer, MT DHES



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

JUL - 9 1996

Ref: 8P2-A

Jan P. Sensibaugh, Administrator
Permitting and Compliance Assistance Division
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Dear Jan:

The purpose of this letter is to respond to your May 9, 1996 letter in which you requested comments on your options for defining prevention of significant deterioration (PSD) baseline areas and setting minor source baseline dates. Before we discuss our comments on your options, we would like to make clear how we currently interpret the baseline areas and the minor source baseline dates in Montana. EPA interprets the PSD baseline areas in Montana to be those areas designated under section 107 of the Clean Air Act (Act) [which are listed in 40 CFR 81.327] as attainment or unclassifiable for the three pollutants with increments [PM-10, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂)]. EPA believes the minor source baseline dates have been triggered for the majority of the State for all three of these pollutants. This interpretation is based on the State's PSD definitions, as well as EPA's PSD requirements. The Enclosure to this letter details the basis for EPA's interpretation, which you should refer to for further information.

Your May 9, 1996 letter indicated that the State wanted to define PSD baseline areas as the area of modeled 1 ug/m³ impact for each major source for all three pollutants with PSD increments. Your May 1996 letter outlined three options that the State was considering to implement its PSD program in this manner. Our comments on the three options are as follows:

Option 1: Interpret the State's existing definition of "baseline area" as establishing 1 ug/m³ impact area baseline areas.

The State's regulations define "baseline area" as "any intrastate area (and every part thereof) designated as attainment or unclassifiable in 40 CFR 81.327 in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the minor source baseline date is established."



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For numerous reasons, EPA cannot interpret the State's definition of "baseline area" as establishing impact area baseline areas. First, the State's definition is basically identical to the federal definition in 40 CFR 51.166(b)(15)(I), except that EPA's definition refers to areas "designated under section 107(d)(1)(D) or (E) of the Act" rather than listing the federal regulation where such designations are promulgated, and EPA does not interpret the federal definition as allowing for source impact area baseline areas. In fact, the State's definition more clearly points the reader to the unclassifiable and attainment areas promulgated in 40 CFR 81.327. Further, the phrase "and every part thereof" in the definition of "baseline area" clarifies that, once a source locates in or has a 1 ug/m^3 impact in an "area," every part of those "areas" is considered a baseline area with one baseline date. Thus, EPA cannot interpret the State's definition as establishing impact area baseline areas.

Option 2: The State could adopt a new definition of "baseline area" reflecting the State's intent to establish source impact area baseline areas, which would be established at the date of application for the PSD permit.

In the August 7, 1980 Federal Register in which EPA promulgated revised PSD regulations pursuant to the *Alabama Power* court decision, EPA clearly stated that the baseline area should be defined as the area designated as attainment or unclassifiable under section 107(d) of the Act in which a PSD source or modification would construct or have a significant impact in (see 45 FR 52715). While EPA received numerous comments favoring a source impact area baseline area, EPA concluded that the area had to be designated under section 107(d) of the Act based on the language in section 169(4) of the Act (which refers to "an area subject to this part") and the *Alabama Power* court opinion (see 45 FR 52715). However, as discussed in the August 7, 1980 Federal Register, EPA decided "to allow flexibility to States, not by accepting alternative definitions in SIPs, but by defining baseline area in such manner as to allow flexibility" (see 45 FR 52726, 3rd column). Specifically, flexibility in redefining baseline areas is inherent in the State's authority to redesignate areas under section 107 of the Act. Thus, EPA could not approve as part of the SIP a revised "baseline area" definition, as suggested by the State. Instead, the State will have to submit section 107 redesignations to change a minor source baseline date.

In your May 9 letter, you questioned whether it was the intent of 40 CFR part 81 to list PSD baseline areas. The purpose of 40 CFR part 81 is to list areas promulgated under section 107 of the Act. Subpart C of 40 CFR part 81 lists the attainment status designations of areas pursuant to section 107 of the Act. In addition, 40 CFR 81.300(b) further clarifies that areas listed as attainment or unclassifiable for particulate matter, SO_2 , and NO_2 represent potential baseline areas or portions of baseline areas which are used in determining compliance with PSD increments. So, the reference to "areas designated under section 107(d)(1)(D) or (E) of the Act" in the federal definition of "baseline area" is referring to those areas designated as attainment and unclassifiable in 40 CFR part 81.

Option 3: Redesignate Montana into practically sized areas under 40 CFR 81.327, such as townships or counties. When new PSD sources trigger the minor source baseline date in an area, the State would submit redesignation requests to encompass the 1 ug/m³ impact area of the source.

The only way the State can untrigger the minor source baseline date for any of the three PSD increment pollutants is to submit to EPA redesignation requests under section 107 of the Act. The State has complete discretion to submit such redesignation requests. However, certain requirements must be met in order for EPA to approve such requests as was discussed in our September 14, 1995 letter. Specifically, attainment or unclassifiable area redesignations under section 107(d) must meet the following conditions:

1. the boundaries of any area redesignated cannot intersect the 1 ug/m³ impact area of any major stationary source or major modification that established the minor source baseline date for the area proposed for redesignation; and
2. baseline area redesignations can be no smaller than the 1 ug/m³ impact area of such sources.

In addition, please note that, in accordance with our regional tribal policy, EPA will need to consult with all of the tribes affected in Montana prior to approving a redesignation request. Also, EPA will have to act on its own authority to redesignate tribal lands located within the boundaries of any new section 107 areas for which the State has requested redesignation.

So, for any redesignation request that the State submits, whether it is to set up county-wide baseline areas, township-wide baseline areas, or baseline areas that encompass the 1 ug/m³ impact area of a source, the State will need to submit information that will enable EPA to determine whether the above requirements are met. Note that the minor source baseline date is set by the first complete PSD permit application in an area, whether or not that source is constructed, the permit is denied, or the application is withdrawn (see 45 FR 52717, August 7, 1980). Thus, EPA will need information on any PSD source that submitted a complete PSD permit application after the trigger date.

If the State wants to redesignate areas based on source impact areas, EPA will need a significant amount of documentation to approve such a redesignation. We will need to see information on the assumptions made for the modeling of the 1 ug/m³ impact area, the modeling input files, and the isopleth maps showing the significant impact areas for all of the PSD sources that would have triggered a minor source baseline date. Depending on the level of modeling done for the PSD permit application, we may require the modeling to be redone with more current models and/or emission factors. This information is necessary so that EPA can adequately determine that the area to be redesignated is not smaller than the 1 ug/m³ impact area of the source. Please note that EPA could generally accept more

conservative, less resource-intensive, modeling demonstrations, such as a screening model. Last, the State would need to provide a legal boundary definition for the area that encompassed the 1 ug/m^3 impact area of the source, which EPA would promulgate in 40 CFR part 81.

If the State wants to redesignate areas based on townships, we may need similar amounts of information, depending on how large the townships are and where the PSD sources are located. However, if the State decides to redesignate to county-wide baseline areas, it is more likely that we will not need as much documentation on the source impact areas except for the sources located close to county line boundaries. In order to determine how much documentation will be required for county-wide or township-wide area designations, EPA suggests that the State first submit a map to EPA showing the boundaries of the areas to be redesignated, the location of all PSD sources that could have triggered a minor source baseline date, and the operating parameters for each source. Then, depending on the source parameters and how far the boundaries of the area to be redesignated are from the source, EPA will determine whether we need to see modeling information for specific sources. Please note that, if a source triggering the minor source baseline date has an impact area that transcends county or township boundaries, EPA will have to designate those two (or more) counties or townships as one area under section 107 of the Act. However, if that has occurred, the State could simply designate the county (or township) that the source was located in and the portion of the adjoining county (or township) that the source impacts as one area, if the State did not want the entire adjoining county (or township) to be triggered.

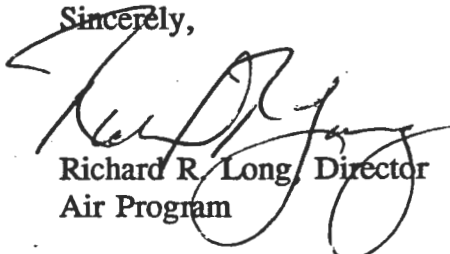
In answer to the last question of your letter, if the State wanted to designate townships as separate areas, we believe we could generically list "all legally defined townships" rather than list each township in 40 CFR part 81, with a few exceptions: In the case where a PSD source impacted more than one township, EPA would have to separately list those townships as one area in 40 CFR part 81. In addition, if the townships are not all contiguous and there is an area in between the townships, we'll probably have to designate the "in between" areas as the "remainder of county" (e.g., see Iowa's designations at 40 CFR 81.316).

For your information, EPA Region VIII has surveyed many of the other regions to see how other States are setting up baseline areas. While we did not hear from all regional offices, we are not aware of any States that are operating their PSD program based on source impact area baseline areas. That is probably due to the significant amount of work that is involved in setting up impact area baseline areas and because of the "triggering, redesignation, untriggering" process that would have to be done for future PSD sources. Of those States that have set up smaller than State-wide baseline areas, the majority have set up county-wide areas. EPA Headquarters' opinion was that county-wide baseline areas would be easier for a State to administer than township areas, especially if the townships were not contiguous and there were "in between" areas. In addition, the State may want to consider

designating areas based on airsheds, although that could take a fair amount of work to set up. In any case, the State has complete discretion to redesignate the boundaries of any attainment/unclassifiable area under section 107 of the Act, as long as the requirements mentioned above are met.

I hope this letter adequately addresses your May 9, 1996 letter. We tried to provide you with all of the information we know about this issue, so that you can make a well-informed decision on how to manage the tracking of air quality deterioration in your State. If you have any questions on the information in this letter or if you want to discuss further, please contact me at 312-6005 or have your staff contact Vicki Stamper at 312-6445. Since I know you want to redesignate areas as soon as possible, I highly recommend that you keep us informed and provide your draft redesignation plans to EPA for review, because preparation and approval of these redesignation requests can be very complicated.

Sincerely,



Richard R. Long, Director
Air Program

Enclosure

cc: Chuck Homer, Permitting and Compliance Assistance Division, MDEQ
Gretchen Bennitt, Planning, Prevention, and Assistance Division, MDEQ

ENCLOSURE

EPA's Interpretation of Baseline Areas and Minor Source Baseline Dates in Montana:

EPA understands that the State has intended to implement its particulate matter increments on a source impact area baseline area. However, the State has not been following all of the requirements to properly implement its program in that manner, as was discussed in our September 14, 1995 letter. Currently, a legal interpretation of the State's definition of "baseline area" is that it is every part of those attainment or unclassifiable areas listed in the State's designation tables in 40 CFR 81.327 in which the source establishing the baseline date would construct in or would have an ambient impact greater than or equal to 1 ug/m³. For PM-10, those areas designated in 40 CFR 81.327 include the Great Falls area, the East Helena area, the Colstrip area, the Billings area, and the "Rest of State" area (which excludes all of the areas listed above as well as all of the PM-10 nonattainment areas in the State). The "minor source baseline date" is then set for a baseline area upon the first date after the "trigger date" for a specific pollutant when a complete PSD permit application was submitted for a source which would emit that pollutant in significant amounts. Thus, based on the State's definitions in its PSD rules (as well as EPA's PSD definitions), we believe the particulate matter minor source baseline date has been triggered for the "Rest of State" area by the Asarco-Troy project in 1979. (Note - we have not determined whether the minor source baseline date has been triggered for the other PM-10 unclassifiable areas listed above.)

For the sulfur dioxide increments, EPA believes there are two PSD baseline areas in the State as listed in 40 CFR 81.327: the Anaconda area and the "Rest of State" area (which excludes the Anaconda area and the State's SO₂ nonattainment areas). For the nitrogen dioxide (NO₂) increments, EPA believes the State is operating on a Statewide baseline area, based on the designation in 40 CFR 81.327. The State had initially set a Statewide minor source baseline date in its PSD regulations as March 26, 1979 for all SO₂ areas and as February 8, 1988 for all NO₂ attainment areas. In December 1993, the State deleted the regulatory Statewide baseline dates for these two pollutants, and the State's revised definitions of minor source baseline date and baseline area are now basically identical to the federal definitions in 40 CFR 51.166(b)(14)(ii) and (b)(15). However, even though the State deleted the specific regulatory Statewide baseline dates for NO₂ and SO₂, the baseline areas for these pollutants are still defined as those attainment and unclassifiable areas listed in 40 CFR 81.327 in which a PSD source proposes to locate or would have a significant impact. Thus, EPA believes the NO₂ minor source baseline date was triggered for the entire State by Continental Lime in 1990, and EPA believes that the SO₂ minor source baseline date was triggered for the "Rest of State" area by the Montana Power Company - Colstrip plant in 1979. (We have not yet determined whether the minor source baseline date has been triggered for the Anaconda SO₂ area.)

Thus, for the majority of the State, EPA believes the minor source baseline dates are currently triggered for particulate matter, SO₂, and NO₂.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

COPY

NOV 20 1996

Ref: 8P2-A

Charles Homer
Permitting and Compliance Division
Department of Environmental Quality
1520 East 6th Avenue
P.O. Box 200901
Helena, Montana 59620-0901

Dear Chuck:

EPA is responding to your October 25, 1996 letter, in which you posed several questions regarding the State's intent to redesignate the State's prevention of significant deterioration (PSD) baseline areas for PM-10, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂).

First, you requested EPA Region VIII to provide you with our listing of all PSD facilities/sources for both EPA and State issued permits, the date of their applications, and the pollutants of concern. In the enclosure to this letter, EPA has included a list of all complete PSD permit applications that came in when EPA was the permitting authority. In addition, we have in our files a copy of a list that your office put together in 1990 regarding minor source baseline date triggering sources, and we have also enclosed that list in case it is not readily available within your files.

Aside from those two lists, EPA does not have a compiled list of all complete PSD permit applications received in the State of Montana. Thus, the State will need to generate this list based on your files for PSD permit applications. As stated in previous letters, the State will need to identify all sources that submitted a complete PSD permit application after the "trigger date" (as defined in 40 CFR 51.166(b)(14) and in the State's PSD regulations) for the respective pollutants with increments. If you want further information on the PSD permits issued by EPA, you should contact Gwen Jacobs of our Montana Operations Office at 441-1130, extension 235.

Your letter also asked for our response to numerous questions regarding minor source baseline date, for which you provided your interpretation of EPA's position on these questions. Your interpretations of EPA's position are correct, with the exception of question (iv). Our responses to your questions are as follows:

Question (i): If a facility has a PSD permit, and either the State or EPA rescinds or revokes the permit, does the minor source baseline date established by the application (for the specific pollutant) remain unchanged?



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The established minor source baseline date would remain the same, except if that permit was rescinded due to the source no longer being subject to PSD permitting due solely to a change in EPA's PSD rules. (For further details, see our response to question (iv) below.)

Question (ii): If the facility that established the minor source baseline date for a given pollutant is no longer in operation, is this trigger date (application date) still established?

The minor source baseline date would still be established based on the date of complete permit application from the source, even if the source discontinued operation at a later date.

Question (iii): If a PSD permitted facility modifies their permit to no longer impact PSD threshold values, is the baseline date eliminated or is it unchanged?

The minor source baseline date would still be established based on the date of complete permit application, even if the source later modifies their permit to no longer impact PSD threshold values.

EPA's position on questions (i)-(iii) is based on section 169(4) of the Clean Air Act (Act), which establishes source application as the baseline triggering mechanism. (See the August 7, 1980 Federal Register, 45 FR 52716-717, for further discussion on this issue).

Question (iv): When a specific portion of the PSD rules are modified (Fugitive Dust Exclusion) that formerly was the sole reason a PSD permit is issued, is the minor source baseline date associated with that permit and pollutant (and now amended PSD rule) still valid?

EPA's general policy on this issue is discussed in the August 7, 1980 Federal Register (45 FR 52717). Basically, EPA's policy is that a minor source baseline date will no longer be considered to be established IF the source which triggered the baseline date by submitting a complete PSD permit application no longer qualifies for that permit as a result of changes made to the Federal PSD permitting regulations (so as to make the source eligible to have the permit rescinded). As discussed in the August 7, 1980 Federal Register, EPA would consider the minor source baseline date to be untriggered in such a case, even if the permit applicant failed to apply for a permit rescission (see 45 FR 52717). However, the State will need to provide verification to EPA's satisfaction that such source would not be still be subject to the modified Federal PSD rule. EPA reiterated this policy in its June 3, 1993 rulemaking that established increments for PM-10 (see 58 FR 31631).

Question (v): When the State requests redesignation into county baseline areas, will those counties with past or present PSD facilities be triggered off of those facilities, or will all counties/baseline areas have the minor source baseline dates reflected by EPA's July 12, 1996 letter.

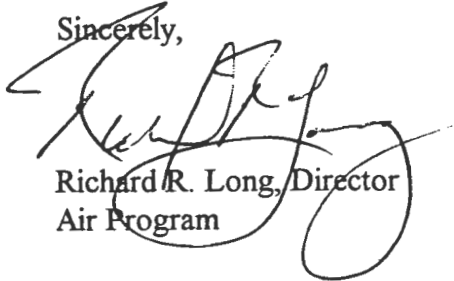
EPA's position is as follows: if the State can adequately demonstrate that no complete PSD permit applications were received for sources proposing to locate in or projected to significantly impact (i.e., have an ambient impact greater than or equal to 1 ug/m³) a specific county, EPA's approval of the State's redesignation request will untrigger the minor source baseline date of the pollutant(s) of concern for that specific county. Conversely, the first complete PSD permit application (after the "trigger date") for a source which proposed to locate in a county or which was projected to significantly impact a county will establish the minor source baseline date for those counties for the pollutant(s) of concern, and EPA's approval of the State's redesignation request will not untrigger the baseline date in those counties (although it may change the minor source baseline date depending on the triggering source). In addition, please note that, in areas where more than one county is



included in the 1 ug/m3 impact area of a PSD source that submitted a complete PSD permit application after the major source baseline date, EPA will have to designate all of the counties in the impact area as one baseline area for the pollutant(s) of concern. This is because EPA cannot redesignate an area that would be smaller than the area of significant impact of a source that established or would have established the minor source baseline date for an area (see 45 FR 52716).

We understand that the State is planning on submitting a redesignation request to EPA to redesignate to county by county in the near future. The State should note that such a revision to the PSD program will need to go through a public participation process, as required by 40 CFR 51.166(a)(5). EPA recommends that the State submit its redesignation package to EPA in draft form prior to initiating the public participation process, because preparation and approval of these redesignation requests can be very complicated. If you have questions on this letter, please contact Vicki Stamper, of my staff, at (303) 312-6445.

Sincerely,


Richard R. Long, Director
Air Program

Enclosures

cc: Jan Sensibaugh, Administrator
Permitting and Compliance Division, MT DEQ



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Enclosure

US EPA PSD Permits Issued:

<u>Project Name</u>	<u>County</u>	<u>Complete App.</u>	<u>Final Action</u>	<u>Pollutants</u>
Northern Energy Resources	Big Horn	1/2/79	4/27/79	PM
US Airforce - Malstrom	Cascade	11/29/79	6/1/81	PM, SO2, NOx
Asarco - Troy Project	Lincoln	4/1/79	9/20/79	PM
Hoerner Waldorf Pulp Mill	Missoula		4/5/77	(Before major source date)
Montana Power Co. - Colstrip	Rosebud	3/26/79	9/11/79	PM, SO2, NOx
High Prairie Energy Co.	Tooele	5/8/80	9/5/80	SO2

PSD SOURCES

CONTINENTAL LIME

Listed Source

Major Stationary Source

County: Broadwater

A. Application Date: 2/12/90
Permit # 1554A-2
3/23/90

Pollutant	Amount	Major	TRACKING REQUIRED
CO	182.5 TPY	>100	
Particulate	31.94 TPY	> 25	XX
NOx	47.7 TPY	> 40	XX

2) MALMSTROM AFB

Major Stationary Source

County: Cascade

A. Application Date: 8/25/80
Permit #1427
10/28/80

Pollutant	Amount	EPA	Major	TRACKING REQUIRED
Particulate	35 TPY		> 25	XX
SO2	324 TPY	(297)	>250	XX
NOx	TPY	(464)	>250	

3) MPC-COLSTRIP 3 & 4

Listed Source

Major Stationary Source

County: Rosebud

A. Application Date: 8/17/77
Permit #1187-M2
2/5/80, 5/26/81

Pollutant	Amount	Major	TRACKING REQUIRED
Particulate	3317 TPY	>100	
SO2	11941 TPY	>100	XX
NOx	46438 TPY	> 40	

Note: Although particulate emissions from Units 3 and 4 were far greater than 100 tpy, the source was in a nonattainment area for particulates and obtain fugitive offsets in order to obtain a permit. Therefore, the particulate baseline was not triggered and tracing was not required.

Bob,
Please
review.

MPC-CUTBANK

Major Stationary Source

County: Glacier

A. Application Date:

Permit # Not issued to date.
date

Pollutant	Amount	Major	TRACKING REQUIRED
NOx	513 TPY	>250	XX
CO	288 TPY	>250	
HC	125 TPY	> 40	

5) NORTHERN MONTANA GAS
(HIGH PRARIE ENERGY COMPANY)

Major Stationary Source

A. Application Date: 4/17/80
Permit #1485 (revoked)
6/13/80

County: Toole

Pollutant	Amount	Major	TRACKING REQUIRED
SO2	284 TPY	>250	XX

B. Application Date: 12/3/82
Permit #1739
3/10/83

Pollutant	Amount	Major
SO2	249 TPY	>250

6) PERTRO GATHERING

Major Stationary Source

A. Application Date: 11/2/81
Permit #1635 (Plant was never built)

County: Toole

Pollutant	Amount	Major	TRACKING REQUIRED
SO2	966 TPY	>250	XX

7) Rosebud Energy

Listed Source

Major Stationary Source

County: Rosebud

A. Application Date: 6/25/85
Permit # 2035 Plant was never built under this permit but was built under permit 2035-
8/5/85 Actually 11/15/85 TRACKING

Pollutant	Amount	Major	REQUIRED
NOx	1435 TPY	>100	
SO2	184 TPY	>100	XX
Particulate	26.6 TPY	> 25	XX
CO	61 TPY	>100	

Application Date: 10/13/87
Permit # 2035-A
12/22/87

Pollutant	Amount	Totals A&B	Major
NOx	TPY	1435	>100
SO2	1656 TPY	1840	>100
Particulate	TPY	26.6	> 25
CO	171 TPY	232	>100

*I don't think
A & B should be
added together since
the plant was not
built under permit 2035,
but was instead redesign,
and built under permit
2035-A*

8) Stone Container

Listed Source
Major Stationary Source

County: Missoula

A. Application Date: 1/26/87
Permit #2344
5/22/87

TRACKING



Pollutant	Amount	Major	REQUIRED
NOx	332 TPY	>100	None

B. Application Date: 1/26/87 Our Revision
Permit #2589
6/14/89

Pollutant	Amount	Major
NOx	Not listed TPY	>100



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

Ref: 8P-AR

AUG - 6 1998

Robert Raisch, Chief
Resource Protection Planning Bureau
Planning, Prevention & Assistance Division
Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Dear Bob:

I am writing to give you our initial comments on Montana's proposal to redesignate the State's prevention of significant deterioration (PSD) attainment and unclassifiable areas, which was submitted in draft form by Robert Habeck of your staff on May 21, 1998. Specifically, the State is proposing to divide the State into 4000+ attainment/unclassifiable areas of 10 kilometer (km) by 10 km squares defined by Universal Transmercator (UTM) coordinates for the three pollutants with PSD increments - sulfur dioxide (SO₂), particulate matter (PM-10), and nitrogen dioxide (NO₂). The State's intent is to untrigger the minor source baseline date for SO₂, PM-10, and NO₂ in as much of the State as possible (i.e., all of the areas not significantly impacted by the existing PSD sources that triggered or would have triggered minor source baseline date), and to ensure that future PSD sources only trigger the minor source baseline date in a small area around the source (i.e., the 100 km² grid where the source locates and those where it has at least a 1 ug/m³ impact).

As you know, the issue of minor source baseline dates, baseline areas, and increments can be very complicated and confusing. As background for understanding our comments, we have included a discussion in Enclosure I regarding the purpose of the PSD requirements of part C of the Clean Air Act (Act) and an explanation of EPA's regulations regarding PSD increments. You may want to refer to that discussion for further explanation of the following comments on the State's draft proposed redesignation request.

The minor source baseline dates for SO₂ and PM-10 were triggered in the "rest of State" unclassifiable/attainment areas in 1979 and for NO₂ statewide in 1990. All growth in emissions since those dates has been consuming the available increment for the majority of the State. The State's proposed redesignation request would untrigger the minor source baseline date in all 100 km² areas in which no PSD source has located or significantly impacted. Thus, all of the emissions from minor/area sources that had been consuming PSD increment (and possibly limiting growth in emissions in some parts of the State) would become part of the baseline concentration in those areas where minor source baseline date is untriggered by this redesignation. In addition, all future growth in minor source emissions in each 100 km² area will continue to be part of the baseline concentration (and thus not consume the available increment) unless and until a new PSD permit application is filed for a source proposing to locate in, or proposing to significantly impact,



the 100 km² area. Thus, the State's proposed redesignation will allow greater deterioration of air quality in clean air areas by minor source emissions than is currently allowed under the State's PSD rules and section 107 area designations.

The preamble to EPA's August 7, 1980 PSD regulations does provide for redesignation of section 107 areas into smaller areas in order to untrigger the minor source baseline date, as long as no PSD source has located in or significantly impacted the area to be redesignated (see 45 FR 52726). While it appears that the State's proposal is consistent with these requirements, EPA is concerned with the impact that this proposed redesignation would have on air quality in the State for numerous reasons.

First, EPA is concerned with the impact that the State's proposed redesignation could have on the State's ability to attain and maintain the new PM-2.5 NAAQS. EPA believes it is necessary that States maintain current PM-10 implementation efforts for purposes of protecting public health during the transition to implementing the revised PM NAAQS. To that end, EPA's December 29, 1997 "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM-10 NAAQS" indicates EPA's intention to interpret section 110(l) of the Clean Air Act to preclude the delay, removal, or relaxation of a control measure approved into the SIP without a demonstration that such a revision would not adversely affect the ability of the State to prepare a SIP that satisfies the requirements for attainment and maintenance of any NAAQS, including the revised PM-2.5 NAAQS. While we are not aware that the State plans to relax any specific emission limitation previously imposed as a result of this redesignation request (although we would like to receive confirmation of that from the State), this still is considered to be a relaxation of the State's PSD program which will allow increased degradation of air quality. Thus, we will need to consider this December 29, 1997 policy in determining approvability of this proposal. A demonstration that the new PM NAAQS won't be adversely impacted by this action may be required of the State.

Second, this action would untrigger the minor source baseline date for PM-10, SO₂, and NO₂ in many of the State's mandatory Class I areas. For example, in Glacier National Park where minor source growth has been consuming PM-10 and SO₂ increment since 1979 (and thus potentially limiting growth in air emissions in some areas), all of the minor source growth that has occurred in the last 19 years would become part of the baseline concentration for that area and the available increment would be expanded by the State's redesignation. In addition, the baseline concentration would continue to grow due to minor source growth until the minor source baseline date was triggered for the 100 km² areas of the park. This loss of protection for Class I areas will have significant consequences. In the early years of the PSD program, minor source growth wasn't recognized as a significant factor in air quality degradation. Twenty years' experience has shown, however, that development of minor sources (e.g., the oil and gas industry) causes increased levels of air pollution that may have adverse impacts on air quality in attainment areas. Because this proposed redesignation would allow increased deterioration of air quality in many of the State's Class I areas (to the point where air quality could be allowed to deteriorate all the way to the NAAQS), EPA believes the State at least must consult with the Federal Land Managers

(FLMs) for the lands affected by this redesignation. From EPA's perspective, this proposal appears to run counter to Congressional intent to "preserve, protect, and enhance air quality in national parks [and] national wilderness areas," as expressed in section 160 of the CAA. Offering the FLMs the option of retaining the already triggered minor source baseline date for their Class I areas would be a possible solution to this dilemma.

Third, this action would also untrigger the minor source baseline date for many of the Indian reservations that are within the State's boundaries, including the Class I Indian reservations. With the exception of nonattainment area designations, EPA historically has not promulgated separate section 107 area designations for Indian reservations. Thus, for PSD purposes, EPA has considered the minor source baseline date to be triggered for an Indian reservation if it was triggered for the section 107 area surrounding the Indian reservation. In Montana, most of the Indian reservations were included within the "rest of State" section 107 area designation. So, EPA has considered the minor source baseline date for the Indian reservations in Montana to have been triggered in 1979 for SO₂ and PM, and in 1990 for NO₂. (Note that it appears no PSD sources have located in any Indian reservations within Montana, so the triggering of the minor source baseline date for all reservations in Montana is contingent upon sources in the State's section 107 areas.)

The State is proposing in its redesignation request to exclude all Indian reservations from the State's section 107 area redesignations. This may not be allowed under our PSD regulations for some of the reservations because, if an Indian reservation is significantly impacted by a PSD source (such as the Crow Reservation and the Northern Cheyenne Reservation being impacted by the Colstrip PSD facilities), the minor source baseline date cannot be untriggered for that reservation. In any case, even if the State were not to exclude the Indian reservations from its section 107 areas, the proposed redesignation request would untrigger the minor source baseline date in many of the reservations. We believe that the tribes should have the ability to retain the minor source baseline date for their reservations, especially for reservations that have reclassified to Class I. Thus, we believe all of the tribes within the State of Montana must be consulted with regarding this redesignation request. EPA could take the lead in consulting with the tribes, but we believe it would be beneficial for the State also to be involved in the consultation process.

Fourth, the State should also consider the impact that this proposed redesignation will have on the State's ability to meet the forthcoming regional haze requirements, which were proposed for public comment on July 31, 1997 (62 FR 41138-60), as well as the State's ability to protect visibility in Class I areas, as required by section 169A of the Act.

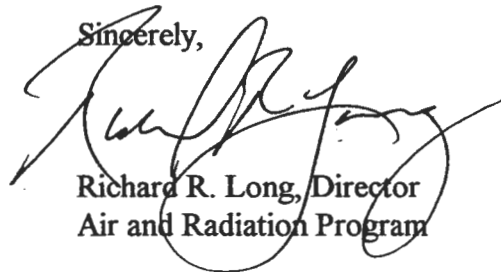
It is important to note that EPA would consider all of these issues relevant whether the State was redesignating to county-wide, township-wide, or 10 km² areas (all of which have been discussed at one time or another by the State), although the State's current proposal is the most extreme of these three redesignation proposals since it would untrigger minor source baseline date in more areas of the State than the other two proposals. Our previous experience in redesignating

section 107 areas to untrigger the minor source baseline date has been for only one part of a State and, in that case, the redesignation did not affect any Class I areas or Indian reservations.

EPA also has several technical concerns with the State's proposal that need to be addressed, as discussed in Enclosure II of this letter. However, there is one very significant issue I want to highlight. In order to properly redesignate any area under section 107 of the CAA, EPA will need to define each specific area by legal definition in 40 CFR part 81. These areas need to be defined in a legal manner, so that a person can determine which section 107 area they are in. The State is proposing to use UTM coordinates to define these areas. However, there are three different UTM zones in Montana. Because this projection takes into account the curvature of the earth, the 100 km² squares do not meet at equal distances between UTM zones. Thus, it is very difficult to legally define the 100 km² areas by UTM coordinates at the boundaries of the UTM zones. The State may need to devise some other method for legally defining those areas. One option may be to use boundary definitions based on Township and Range, if the entire State has been platted in this manner. In addition, the State will need to legally define the 1 ug/m³ impact areas, because those will have to be designated as separate section 107 areas where the minor source baseline date is considered to be triggered.

Because of the many issues associated with the State's proposed redesignation request, it seems a good idea to have a conference call or meeting to discuss the State's plans for proceeding with this redesignation request and, especially, the State's schedule for adopting these changes to its PSD program. Note that this redesignation request would be considered to be a revision to the State Implementation Plan and thus must go through a public comment period and hearing. We believe that the consultation with the tribes and the FLMs needs to be initiated well in advance of the State's public hearing on this redesignation. Please contact me at (303) 312-6005 after you have reviewed this letter and are ready to discuss this further. If your staff have questions on the issues discussed in this letter or in the enclosure, they should contact Vicki Stamper at (303) 312-6445.

Sincerely,



Richard R. Long, Director
Air and Radiation Program

Enclosures

cc: Don Vidrine, Chief
Air and Waste Management Bureau, MDEQ

Bob Habeck,
Resource Protection Planning Bureau, MDEQ

ENCLOSURE I

Background Information on Part C of the Clean Air Act and the PSD Increments:

The intent of the PSD provisions in part C of the Clean Air Act (CAA) is to ensure that economic growth will occur in harmony with the preservation of existing clean air resources, and also to preserve, protect, and enhance the air quality in areas of special natural, recreational, scenic, or historical value (i.e., national parks or wilderness areas). The PSD preconstruction permitting regulations represent the main mechanism for implementing the PSD provisions of the CAA, although they are not the sole mechanism for preventing significant deterioration of air quality. Among other things, the PSD permitting regulations require that a new and modified major stationary source locating in an attainment or unclassifiable area must utilize best available control technology (BACT) to reduce air emissions and that the new or modified major source must provide an air quality analysis demonstrating that the source won't cause or contribute to a violation of the national ambient air quality standards (NAAQS) or the PSD increments. The PSD increments represent Congress' intent that the air quality in clean areas of the nation not be allowed to deteriorate to the level of the NAAQS. Instead, Congress set incremental levels of air quality deterioration that could be allowed to occur in clean areas. These levels, or increments, vary depending on the classification of the area. Under the CAA, EPA has set increments for three pollutants: PM-10, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂). As you know, most national parks and wilderness areas that were in existence as of August 7, 1977 and that met the size criteria of section 162 of the CAA were designated mandatory Class I areas (allowing the least amount of degradation of air quality), while the rest of the country was designated Class II. The CAA provided that, other than the mandatory Class I areas, States or Indian tribes could redesignate to Class I or, with certain restrictions, to Class III. Three tribes in Montana have redesignated their reservations to Class I: the Northern Cheyenne Indian Reservation, Fort Peck Indian Reservation, and the Flathead Indian Reservation.

In theory, the increments ensure that air quality in clean air areas will not be allowed to deteriorate right to the levels of the NAAQS. In practice, the language of the CAA specifies that the air quality cannot deteriorate more than the applicable increment *over baseline concentration*. "Baseline concentration" is defined in the CAA and EPA's regulations as the ambient concentration which exists at the time of the first application for a PSD permit in an area subject to part C of the CAA. The statutory definition also provides that emissions from any major emitting facility that commenced construction after January 6, 1975 shall not be included in the baseline and shall consume the available increment.

Interpreting the language in the statutory definition of "baseline concentration," EPA developed the concepts of major source baseline date and minor source baseline date. Specifically, EPA's rules provide that actual emissions increases from major stationary sources occurring after January 6, 1975 for PM-10 and SO₂, and after February 8, 1988 for NO₂ (i.e., the major source baseline dates) consume the available increment. These dates are the same for all

States. However, emissions increases from minor stationary sources and other types of sources (area, mobile, etc.) do not consume the available increment until the minor source baseline date is "triggered" for an area. The minor source baseline date is triggered by the first complete PSD permit application for a source which locates in, or significantly impacts (i.e., produces an impact equal to or greater than 1 ug/m³) an area or areas designated as attainment or unclassifiable under section 107 of the CAA.

The section 107 attainment/unclassifiable designations are promulgated in 40 CFR part 81. Currently, Montana has two SO₂ attainment areas - the Anaconda area and the rest of the State (excluding the State's SO₂ nonattainment areas), five PM-10 unclassifiable areas - Great Falls, East Helena, Colstrip, Billings, and the rest of the State (excluding the State's PM-10 nonattainment areas), and one NO₂ attainment area - the entire State. The minor source baseline dates for SO₂ and PM-10 were triggered in the "rest of State" areas in 1979 and for NO₂ statewide in 1990. Thus, all growth in emissions since that date has been consuming the available increment for the majority of the State. Note that the available increment represents a concentration of degradation of air quality that is allowed to occur over the baseline concentration. While the minor source baseline date may have been triggered by one source on one date for the entire State, the amount of increment consumed varies throughout the State depending on the sources in the area and their emission characteristics, the topography, meteorology, etc., and can only be determined by dispersion modeling.

ENCLOSURE II

In addition to those issues discussed in the letter accompanying this enclosure, EPA has the following technical comments on the State's proposed redesignation of PSD baseline areas:

1. General comment: The State is claiming that this redesignation will make it easier to track increment consumption in the State. EPA does not necessarily agree. First, the State will still have to consider major and minor source emissions outside the areas where minor source baseline date is triggered in determining the amount of PSD increment consumed. Sources may be located outside a triggered area, but growth in their emissions since the minor source baseline date for that triggered area may still affect the concentration of the pollutant in the triggered area. Thus, the State will have to consider more sources than those located within the triggered areas.

In addition, increment consumption analyses will become very confusing when there are different minor source baseline dates for different section 107 triggered areas that are nearby or that overlap. Based on the maps that the State included in its proposed redesignation request, it appears there will be quite a few areas where minor source baseline date has been triggered that are near each other or overlap. For these areas, numerous modeling runs with different emissions data sets will probably be necessary. This will also be a problem when a new PSD source is permitted near an existing section 107 area for which the minor source baseline date has been triggered, as there will be a different minor source baseline date for the new PSD area.

Thus, it does not appear that dividing the State up into small section 107 areas will make it easier for the State to track increment. On the contrary, it appears much more complicated than tracking in a statewide section 107 area with one set baseline date.

A more sensible alternative to the 100 km² grids, as far as tracking increment is concerned, would be to divide the State on an airshed basis and have one single baseline date for each airshed. It would be easier to track increment and determine which source emissions to consider in this case. However, the State would still have the same constraints on redesignating, if the airshed boundaries would subdivide any 1 ug/m³ impact area of a PSD source.

2. According to the maps generated by the State to show the 1 ug/m³ impact areas of all of the PSD sources in Montana, it appears that there are several 1 ug/m³ impact areas that overlap (e.g., Luzenac, Continental Lime, and Rhone Poulenc for PM-10). Many of these sources whose impact areas overlap have very different minor source baseline dates. To be consistent with the requirements for redesignating section 107 areas, the earliest minor source baseline date in an area where source impacts overlap would have to apply. In addition, as stated in comment #1 above, tracking PSD increment consumption in an area with varying minor source baseline dates seems very complicated. It would make more sense to combine those impact areas into one section 107 area with the minor source baseline date being triggered based on the source with the first PSD permit application.

If the State does not wish to set a single baseline date for the overlapping impact areas, then the State will have to carve out the areas (and thus legally define those areas) in which only one PSD source has impacted. The State should begin defining section 107 areas with whichever source had the earliest complete PSD permit application. Thus, in the example given above, Luzenac's entire 1 ug/m³ impact area (as defined by legal description or some other replicable method) would be one section 107 area. Then the State should consider the source with the next earliest complete PSD permit application (i.e., Rhone Poulenc). That area of Rhone Poulenc's 1 ug/m³ impact area not included in Luzenac's section 107 area would then have to be legally defined and designated as a separate section 107 area. In this example, Continental Lime's 1 ug/m³ impact area appears to be wholly enclosed by Luzenac's impact area, so there would be no separate designation for Continental Lime. In defining the section 107 areas based on Luzenac's impact area and the remainder of Rhone Poulenc's impact area, the State would have to make sure that the boundaries were contiguous in the areas where the impact areas overlap.

3. EPA would like to provide a general comment regarding which emissions should be modeled for each PSD source. Since a source triggers minor source baseline date at the time of submittal of a complete PSD permit application, the area of impact of the source for the purposes of the State's redesignation request should be based on the source's proposed allowable emissions at the time of the submittal of the complete PSD permit application. Thus, if a source filed a complete PSD permit application in 1980, the source impact area should be based on the allowable emissions at the time of the PSD permit application. If that source had minor modifications since that time, or if the source reduced its allowable emissions since that time, those changes in emissions would not be modeled in determining the source impact area for this redesignation. However, if the source went through PSD permitting for a major modification, the allowable emissions increase at the time of the PSD permit modification must also be modeled along with the allowable emissions from the original PSD permit application.

4. EPA does not consider the SCREEN3 modeling to be acceptable for all of the PSD sources modeled by the State, for the following reasons:

a. The methodology which the State used to convert one-hour averages to annual average concentrations is contained in a 1992 document for application of screening procedures. However, that guidance has been replaced by the language in the SCREEN3 Users Guide (1995) which states "For seasonal or annual averages, section 4.4 of the screening procedures document contains a procedure using hand calculations, but the use of ISCLT or another long term model on the SCRAM BBS is recommended." Since this is a regulatory application, the "hand calculation" procedure is not considered acceptable for determining annual average concentrations and a more refined modeling analysis (ISCST3, ISCLT, Calpuff) is necessary.

b. Screen3 is not acceptable for evaluating source impacts beyond 100 km. For impacts beyond this distance, the more refined techniques noted above need to be used.

c. Screen3 also cannot be used to determine impacts from multiple stacks, except for stacks that are very close together and have similar plume rise. This is particularly important in this application given the small section 107 areas being proposed and the fact that merging stacks will directly affect the spatial distribution of pollutant concentrations. It is not clear how the stacks were merged in the State's analysis.

5. In addition, there is insufficient information provided on the modeling that was performed. The State must submit all information on the sources being modeled, including how that information was converted into model inputs. Modeling output files for all sources modeled should also be provided. We also want to know whether any mobile or area source emissions from the major sources that were not included in the modeling.

6. Specific source issues/comments:

a. Petro Gathering - The State's submittal indicates that the status of this source with respect to PSD and minor source baseline date is unclear, because EPA issued the PSD permit before Montana adopted the PSD program and the source never constructed. It does not matter whether the source constructed - if it had a complete PSD permit application after 8/7/77, it triggered the minor source baseline date for SO₂. (See 45 FR 52676, 52717 (8/7/80) for further discussion of this specific issue).

b. The State's submittal indicates that Spring Creek Coal and Asarco-Troy were not modeled because the sources would no longer be considered subject to PSD due to the change in EPA's PSD rules regarding fugitive dust (see 45 FR 52676, 52693). EPA's general policy on this issue is discussed in the August 7, 1980 preamble to the PSD rules (45 FR 52717), and was also discussed in a 11/20/96 letter to the State. The policy states that a minor source baseline date will no longer be considered to be established IF the source which triggered the baseline date by submitting a complete PSD permit application no longer qualifies for that permit as a result of changes made to the Federal PSD permitting regulations (so as to make the source eligible to have the permit rescinded). As discussed in the August 7, 1980 preamble to the PSD rules, EPA would consider the minor source baseline date to be untriggered in such a case, even if the permit applicant failed to apply for a permit rescission (see 45 FR 52717).

However, the State still needs to demonstrate to EPA's satisfaction that these sources would not still be subject to the modified Federal PSD rule. If the State does not have the permit applications for these two sources to make this determination, they should be available at the EPA Montana Operations Office.

c. Northern MT Gas (High Prairie Energy) was not included in the State's list of PSD sources, but EPA had previously identified this facility as a PSD source for which we issued the permit. Is it possible the name of this source has changed, and the State did include it in the list of PSD sources? If so, we request that the State clarify the current name of this facility. Otherwise, it should be included in the State's list of PSD sources and modeled appropriately. Information from the State submitted on 12/4/90 indicated

that this source's permit was revoked and that a synthetic minor permit was issued (with a 249 tpy limit). However, in accordance with the 8/7/80 PSD preamble, if the source's original PSD permit application was deemed complete, the source triggered minor source baseline date on the date of the submittal of the application, even if the permit was later revoked (see 45 FR 52717).

d. Stone Container was not identified in the State's list of PSD sources, although it had been identified in a 12/4/90 submittal by the State. This source appears to have been major for NO₂ before the NO₂ major source baseline date, so we assume that is why the State did not include Stone Container in its list of PSD sources. However, our records show that the source was also major for PM, and thus would have triggered minor source baseline date for PM. Therefore, it should be included in the State's list of PSD sources and be modeled appropriately for PM.

e. Northern Energy Resources in Big Horn County should also be included in the State's list of PSD sources and modeled appropriately. This was a source for which EPA issued the PSD permit. If State needs the files on this source, they can be obtained from EPA's Montana Operations Office.

7. Under "Current Source Baseline Dates" at the bottom of the page entitled "DEQ Redesignation of PSD Baseline Areas," the State incorrectly identified the minor source baseline dates for NO₂, SO₂, and PM-10 (i.e., the State listed dates of 2/8/88, 8/7/77, and 8/7/77 respectively). These are not the minor source baseline dates for the State's section 107 attainment/unclassifiable areas; instead these represent the "trigger dates" for establishing the minor source baseline dates (see definition of "minor source baseline date" in 40 CFR 52.21(b)(14)(ii)). The minor source baseline date is triggered on the date of the first complete PSD application submitted after the applicable "trigger date." It is triggered for the section 107 attainment/unclassifiable area in which the source locates or significantly impacts (i.e., equal to or greater than 1 ug/m³ impact), and it is triggered for those pollutants for which the source is major or which are emitted in significant (as defined in 40 CFR 52.21(b)(23)(i)) amounts. As stated in the cover letter, EPA believes the minor source baseline dates for the "rest of State" areas were triggered in 1979 for PM (either by Asarco-Troy on 4/1/79 or, if that permit can be rescinded because the change in EPA's PSD rules regarding fugitive dust, by US Airforce - Malmstrom on 11/29/79); on 11/29/79 for SO₂ by US Airforce - Malmstrom; and by Continental Lime on 1/10/90. EPA has not determined when the minor source baseline date has been (or if it has been) triggered for the State's other four PM-10 section 107 unclassifiable areas or the State's other SO₂ attainment area.

8. In the memo from Bob Richards which was included in the State's proposed redesignation request, it is indicated that some sources may have triggered the minor source baseline date for total suspended particulate, but that the sources would not have triggered minor source baseline date for PM-10 (because their PM-10 emissions were not major or in emitted in significant amounts). As discussed in EPA's June 3, 1993 rulemaking which established increments for PM-

10, the State can untrigger minor source baseline date for PM-10 in an area if it can be shown, to the satisfaction of EPA, that the source which was considered major for TSP would not be considered major for PM-10 (see 58 FR 31631). If the State decides to make this finding for any source, the State must submit documentation to EPA to demonstrate that the source wouldn't have been major for PM-10.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

OCT 14 1998

Ref: 8P-AR

Robert Raisch, Chief
Resource Protection Planning Bureau
Planning, Prevention & Assistance Division
Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Dear Bob:

We appreciated the opportunity to meet with you and others from the Department on September 24, 1998 to discuss the State's proposal to redesignate the State's prevention of significant deterioration (PSD) baseline areas into 100 km² grids. We definitely gained a better understanding of the State's intent in proposing this redesignation, although we are still concerned that the State's proposal, if implemented, will not adequately prevent significant deterioration of air quality for a large part of the State. Our discussion on the proposed Asarco-Rock Creek mine seemed to underscore that concern. We are hopeful that a resolution can be reached addressing the State's concerns while still providing PSD protection for, at least, the Class I areas in the State.

The purpose of this letter is to provide the State with the additional information that you requested at our September 24 meeting. We have included in Enclosure I an analysis of how we interpret the minor source baseline dates for sulfur dioxide (SO₂), nitrogen dioxide (NO₂), and PM-10 under the State's PSD program. Our findings are that the State originally intended to establish impact area minor source baseline dates only for particulate matter (formerly total suspended particulate, now PM-10) and that the State intended to have Statewide minor source baseline dates for SO₂ and NO₂. In fact, the State's rules specifically identified the baseline dates for SO₂ and NO₂ as March 26, 1979 and February 8, 1988, respectively, for all attainment/unclassifiable areas in the State. The State then revised its PSD rules in 1993 by replacing the State's definitions of "baseline area" and "baseline date" with revised definitions that are basically identical to the Federal definitions in 40 CFR 51.166(b)(14) and (15). The State's rules currently define the baseline area (where the minor source baseline date is considered triggered) as each entire section 107 attainment or unclassifiable area where a proposed PSD source would locate or would produce at least a 1 ug/m³ ambient impact - for all three pollutants with increments. The result is that the minor source baseline date is considered to be triggered for, at least, the "rest of State" areas for PM-10 and SO₂ and for the entire State for NO₂.

You also asked whether sources outside the baseline area can consume the available increment within the baseline area, even if these sources are located in an area where minor source baseline date has not been triggered. EPA's position on this issue is that, because the increments



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and baseline concentrations are based on ambient concentrations, sources located outside a triggered baseline area can consume increment in that area. We have included in Enclosure II a copy of a July 31, 1981 EPA letter containing PSD policy determinations which explains our position on this issue (refer to question #6 in the enclosed letter). This position is also evident in the modeling discussions in the October 1990 PSD/NSR Workshop Manual (see Section IV. of Chapter C). For example, for developing the emission inventory for the increments analysis, the workshop manual indicates that the inventory should include all increment-affecting sources located in the impact area of the new source or modification, as well as all increment-affecting sources located within 50 kilometers of the impact area if they, either individually or collectively, affect the amount of PSD increment consumed. Thus, if a source's emissions impact an area where the minor source baseline date is triggered, then that source's emissions do consume increment even if the source is physically located in an area where minor source baseline date is not triggered.

I look forward to discussing this issue with you further during our forthcoming conference call that has recently been rescheduled to Wednesday, November 4th from 2 - 4 pm. If you have any questions on this letter or the enclosures, please feel free to contact me at 303-312-6004, or have your staff contact Vicki Stamper at 303-312-6445. Otherwise, we will talk further in early November.

Sincerely,



Larry Svoboda, Leader
Air Quality Planning and Management Unit

Enclosures

cc: Jan Sensibaugh, Permitting and Compliance Assistance Division, MT DEQ
Bob Habeck, Planning, Prevention and Assistance Division, MT DEQ

Enclosure I

The purpose of this enclosure is to explain how EPA interprets the PSD minor source baseline dates to be triggered for SO₂, NO₂, and PM-10 in the State of Montana. Before explaining how we interpret the State's rules, we believe it is important to clarify EPA's PSD rules regarding the flexibility allowed in defining baseline areas and minor source baseline dates.

EPA's PSD Regulations:

In the PSD regulations promulgated on August 7, 1980, EPA defined "baseline concentration" as the ambient concentration that exists in the baseline area at the time of the applicable baseline date, and EPA defined "baseline area" to mean every intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the baseline date would locate or would have an air quality impact equal to or greater than 1 ug/m³. In the preamble to these regulations, EPA explained that States have the option of redefining baseline areas (and thus the area where minor source baseline date is triggered) by redefining the boundaries of attainment/unclassifiable areas under section 107(d) of the Act into smaller areas, as long as the boundaries of any new areas do not intersect or are not smaller than the area of impact of any major stationary source or major modification that established or would have established the baseline date for the area or that is otherwise required to obtain a PSD permit. (See 45 FR 52716). EPA also stated in the preamble that, rather than accepting alternative definitions in SIPs, EPA was allowing flexibility in defining baseline area through the State's authority to request redesignation of boundaries of attainment/unclassifiable areas under section 107(d). (See 45 FR 52726). Thus, the baseline date is considered triggered for the entire designated section 107 attainment/unclassifiable area and all impacted section 107 areas by the applicable PSD source, unless non-impacted portions are redesignated under section 107(d) into smaller areas.

Areas designated under section 107(d) of the Act are promulgated in 40 CFR part 81. Section 81.300(b) clarifies that areas listed as attainment or unclassifiable in part 81 for TSP, SO₂, and NO₂ represent potential PSD baseline areas. Section 81.300(b) also clarifies that, with respect to areas identified as "rest of State," it should be assumed that "rest of State" comprises a single area designation for PSD baseline area purposes. (Note that section 81.300(b) also states that, for the PM-10 area designations, the term "rest of State" is an interim measure to designate as unclassifiable all locations not originally designated as nonattainment for PM-10 in accordance with section 107(d)(4)(B) of the Act. This provision was added at the time the original PM-10 nonattainment areas were promulgated, before EPA had promulgated PSD increments for PM-10. However, now that EPA has replaced the TSP increments with PM-10 increments and EPA has approved Montana's adoption of the PM-10 increments (and, consequently, deleted the TSP area designations for the State), the "rest of State" area in Montana's PM-10 area designations *does* represent a potential PSD baseline area.)

Montana's PSD Regulations:

As you know, in November of 1982, the Montana State Board of Health and Environmental Sciences adopted PSD regulations, and those regulations were submitted to EPA for approval into the SIP on January 19, 1983. In our files of the State's PSD submittal, we found the hearing record which indicates that the Board grappled with the decision whether to trigger baseline date based on an impact area basis or on a statewide basis. The final decision of the Board as reflected in our files was to adopt a statewide baseline date for SO₂ and a source impact area baseline date for TSP. Specifically, the State's original PSD regulations provided that, for SO₂, the baseline date was March 26, 1979 for all areas designated as attainment or unclassifiable under 40 CFR 81.327, and, for particulate matter, the baseline date was the date of the first complete PSD application after August 7, 1977 for each baseline area. The State's rules defined "baseline area" as any intrastate area in which a major stationary source or major modification would have an impact equal to or greater than 1 ug/m³, annual average, and the area is designated as attainment or unclassified under 40 CFR 81.327.

EPA recognized the State's intent in defining a statewide baseline date for SO₂ and an impact area baseline date for TSP in our May 5, 1983 approval of Montana's PSD program. (See 48 FR 20232). It is not clear whether the State understood at the time that the source impact areas for all existing, as well as new, PSD sources needed to be designated as separate attainment or unclassifiable areas under section 107(d) of the Act in order for the State to implement TSP baseline dates on a source impact area basis (although this was clearly discussed in EPA's 8/7/80 PSD rulemaking, as described above).

In July of 1990, the State submitted a PSD SIP revision to adopt the PSD increments for NO₂ into the State's PSD program, following EPA's promulgation of NO₂ increments in 1988. Specifically, the State revised, among other things, the definition of "baseline date" in its PSD regulations to define baseline date for NO₂ as February 8, 1988 for all areas of the State. Thus, the State clearly intended at the time of adoption of the NO₂ increments to have a statewide baseline date for NO₂, as was done for SO₂ in 1982. In EPA's May 24, 1991 approval of the State's July 1990 SIP revision, EPA also acknowledged that the State employed a fixed statewide baseline date for NO₂ (see 56 FR 23809). (Note - the majority of States nationwide have adopted a Statewide baseline date for NO₂; for SO₂ and PM, the record is more varied.)

Pursuant to the State's adoption of the NO₂ increments, EPA informed the State of, among other things, the need to periodically track consumption of NO₂ increment. In a January 4, 1991 letter, the State indicated that it did not have the resources to track increment consumption on a Statewide basis and that, instead, the State intended to submit a redesignation document under 40 CFR 81.327 to implement a county-wide definition of "baseline area" for all three pollutants - SO₂, TSP, and NO₂. The January 4 letter also stated that the State would be revising its definitions of "baseline date" and "baseline area" to be identical with EPA's definition at the same time it submits its redesignation request to go to countywide baseline areas. Thus,

this letter indicates that 1) the State had adopted a Statewide baseline date for NO₂, and 2) the State knew that it had to go through a redesignation process to implement a different baseline date for all three pollutants.

In December of 1993, the Montana Board of Health and Environmental Sciences adopted major revisions to, among other things, the State's PSD permitting regulations. The State revised its rules, for the most part, to be consistent with the Federal PSD regulations in 40 CFR 52.21. This included the revision of the definition of "baseline area" to be essentially identical to the Federal definition, the deletion of the previous language defining baseline dates for SO₂, TSP, and NO₂, and the adoption of a definition of "minor source baseline date" essentially identical to Federal definition.

EPA is unable to find any indication in our files of the State's December 1993 rule revisions (which were submitted to EPA on May 17, 1994) that the State believed or intended that these changes in its PSD rules would provide for source impact area baseline areas for PM-10, NO₂, or SO₂. Further, the State was aware that it had to take a second step to redesignate areas under section 107(d) of the Act in order to change the minor source baseline dates, but no redesignation request was included with the May 17, 1994 submittal. Once we approved those definitional changes on July 18, 1995 (60 FR 36715), the legal interpretation of baseline area and minor source baseline date was that the minor source baseline dates were considered to be triggered in the "rest of State" area for PM-10 and SO₂ and in the entire State for NO₂ on the date of the first complete PSD permit application for sources locating in or impacting those areas (i.e., in 1/79 for PM-10 by either the Spring Creek Coal or the Asarco-Troy PSD permit applications or, if the State determines that these permits can be rescinded, then on 3/26/79 by the Montana Power Company Colstrip PSD permit application; on 3/26/79 for SO₂ by the Montana Power Company Colstrip PSD permit application; and on 1/10/90 for NO₂ by the Continental Lime PSD permit application.)

EPA realized shortly after our July 18, 1995 approval that the State was still implementing the PM baseline dates on a source impact area baseline date, and we notified the State in a September 14, 1995 letter that, in order to implement the PM increment on a source impact area basis under both the State's and EPA's PSD rules, the State would have to request redesignation of those impact areas (by legally defining the boundaries) as separate attainment/unclassifiable areas under section 107(d) of the Act. We also explained in that letter the process that needed to be followed to request such a redesignation of PSD baseline areas. The State responded in a letter dated May 9, 1996, in which the State indicated it wanted to implement its PSD program as "originally intended," that is to define PSD baseline areas as the impact area for all three increment pollutants. EPA was confused by this statement since, as discussed above, all correspondence we had received up until then indicated that the State had initially intended to implement only the PM increment on a source impact area basis and that the State was most recently considering county-wide baseline areas for all three pollutants. This May 9 letter also

indicated that the State believed that its definition of "baseline area" as adopted in December of 1993 could be interpreted as establishing 1 ug/m3 baseline areas at the time of PSD permit application.

EPA explained in a July 9, 1996 response to the State why we could not interpret the State's definition of "baseline area" as establishing source impact area baseline areas. Specifically, the term "baseline area" is defined in the State's rules as: "any intrastate area (and every part thereof) designated as attainment or unclassifiable in 40 CFR 81.327 in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m3 (annual average) of the pollutant for which the minor source baseline date is established." The only difference between the State's definition and the Federal definition is that the State cites 40 CFR 81.327 for the areas designated as attainment or unclassifiable, rather than citing the statutory authority for such designations in section 107(d)(1)(D) or (E) of the Act as the Federal definition does. The State's definition is actually more clear in that it specifies where in the CFR EPA publishes attainment and unclassifiable area designations. Because the State's regulation defines baseline area as any intrastate area and every part thereof designated as attainment or unclassifiable in 40 CFR 81.327, the logical interpretation is that the baseline area encompasses the whole of each section 107 attainment or unclassifiable area in which the source locates in or has a 1 ug/m3 or greater impact. As stated in previous letters, the State has one Statewide attainment/unclassifiable area for NO2 (thus, the NO2 minor source baseline date has been triggered for the entire State); two attainment/unclassifiable areas for SO2 - the Anaconda area and the "rest of State" which includes the entire State excluding the Anaconda area and the State's designated SO2 nonattainment areas (thus, the SO2 minor source baseline date has been triggered for at least the "rest of State" area); and 5 unclassifiable areas for PM-10 - the Great Falls area, the East Helena area, the Colstrip area, the Billings area, and the "rest of State" area which includes the entire State excluding the above unclassifiable areas and the State's PM-10 nonattainment areas (thus, the PM-10 minor source baseline date has been triggered for at least the "rest of State" area). [Note that EPA has not researched whether the minor source baseline date has been established for the State's other SO2 or four other PM-10 attainment/unclassifiable areas.)

In summary, we have explained above that this is how EPA intended its PSD regulations to be interpreted, and that the section 107 area redesignation process was the process intended for States to have flexibility in setting minor source baseline dates. This interpretation (including the process for redesignation of section 107 area boundaries) is also fully explained in the July 1990 PSD Workshop Manual (see Sections II.B. - II.D. of Chapter C). We hope we have provided enough information here to explain why the State's PSD rules currently provide for basically Statewide (or close to Statewide) baseline areas and minor source baseline dates for SO2, PM-10, and NO2. Behind this enclosure, we have included relevant excerpts from the 8/7/80 preamble to the PSD rules, as well as information from the State's original submittal of its PSD rules and its submittal of the NO2 increments, that were referred to in the above discussion, in case that information is not readily available in the State's files. If the State needs copies of any other item mentioned in this enclosure, please let us know and we will send you copies

The effect was to allow sources to avoid increment consumption analyses for the emissions increase allowed in the revision. EPA considered the exemption justified because states and sources were unaware that EPA would establish a uniform baseline date of August 7, 1977, and those emissions increases after that date would consume increment.

EPA believes this exemption from increment consumption analyses is no longer necessary. States and sources have been on notice since June 1978 that emissions increases at existing sources due to SIP relaxations must be evaluated for possible increment consumption. No state or source has been uncertain as to the applicable baseline date, or been placed in an inequitable position as to other states or sources. Therefore, today's regulations do not exempt from increment consumption analyses those SIP relaxations not finally approved by EPA prior to the baseline date in the affected area.

One commenter suggested that EPA extend the transition provision within the June 1978 regulations for assessing increment consumption. 43 FR 26401 col. 2. This provided that increased emissions from plan relaxations received after the August 7, 1977 baseline date but before the June 19, 1978 promulgation would consume the applicable increment but could be reviewed as part of the periodic assessment rather than assessed individually for increment consumption prior to plan approval.

EPA does not believe that a similar exception is required under today's regulations. EPA considered the exception necessary in June 1978 due to uncertainty as to how the 1977 Amendments would affect pending SIP relaxations. Such uncertainty no longer exists, since sources have been on notice since June 1978 that SIP relaxations after that date must be individually reviewed for increment consumption. Therefore, emissions increases due to plan relaxations received after June 19, 1978 must be individually evaluated for increment consumption prior to EPA approval.

EPA is concerned, however, that the new definition of baseline concentration may work a hardship on states with SIP relaxations pending when a PSD application is filed in an area. A state may submit a SIP relaxation affecting a source, or group of sources, located in an area where the baseline date has not been set, and would not be required to provide an increment consumption analysis. If prior to final EPA approval, a source filed a PSD application in the

area, the application would establish a baseline date and the state would have to withdraw the revision until it has conducted the necessary increment analysis. To prevent such burdensome delays, EPA is exempting from individual increment analyses SIP relaxations pending at the time a baseline date is established in the area affected by the revision. However, increment consumption due to emissions from these relaxations must be evaluated as part of a state's periodic assessment. Exemptions from individual analyses is analogous to the previous relief provided for sources subject to SIP relaxations submitted after August 7, 1977, but before EPA's June 1978 promulgation. The exemption is therefore consistent with prior EPA policy.

B. Baseline Area.

In response to the September 5, 1979 proposal, fifty-three commenters felt that an AQCR definition of baseline area would not produce a great deal of administrative relief and would, simultaneously, limit an area's growth options. These commenters favored defining baseline area as the area of significant source impact, based on required modeling and monitoring analysis. Such an approach was claimed to provide just as much administrative relief, more growth options, and elimination of the problem of a small PSD source triggering the baseline date for a large area. Seventeen commenters favored a baseline area definition geared to areas designated as clean or unclassified under section 107. Those favoring this alternative strongly preferred a "redesignation" procedure to accompany this option. Other commenters objecting to the AQCR approach suggested: county boundary lines (three), and the entire state (one).

In response to EPA's January 30 notice, fourteen of sixteen commenters favored a source impact area definition of baseline area. One of the remaining two commenters favored retention of the AQCR approach while the other commenter desired a county or some other legal boundary approach. All eighteen comments received favored triggering a baseline only in the area in which a source would locate, and not in those other areas which it would impact. Nineteen of twenty-nine commenters favored permitting state redesignation but to areas no smaller than a source impact area. Seven other commenters favored no limitations on the redesignation procedure. The remaining three commenters opposed allowing states to redefine baseline areas through redesignation.

EPA has determined that baseline area should be defined as the area designated as attainment or unclassifiable under section 107(d) in which a source or modification subject to PSD review would construct or on which it would have an impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ on an annual basis. EPA has concluded that "an area subject to this part," as used in section 169(4), refers to areas designated attainment or unclassifiable under section 107(d).

This view is strongly suggested by Judge Robinson's opinion on baseline concentration in the December 1979 *Alabama Power* ruling. Referring to Congress' intent to use actual air quality data to establish baseline concentrations, Judge Robinson states that "the task of monitoring existing ambient pollution levels in attainment areas is assigned to the first permit applicant, who will provide the information essential to calculation of the baseline." (Emphasis added) 13 ERC 1993, 2022. The footnote which follows that sentence discusses a state's obligation under section 107(d)(1) to submit area designations to EPA and the fact that section 107 lists submitted to date by the states indicate that many areas lack acceptable air quality information. *Id.* The references to attainment areas and section 107(d) designated areas indicate that the court interprets the statute as requiring that baseline concentrations be calculated for each clean area designated under section 107(d)(1).

EPA thus believes that neither the statute nor the court opinion support the proposed AQCR approach. The majority of comments also opposed defining baseline area as AQCR. Opposition was based on the view that it would do little to alleviate administrative problems, offered no flexibility in states, and would often limit an area's growth options by encompassing too large an area.

EPA has also determined that a PSD source should trigger the baseline in all intrastate clean areas that it impacts as well as the area it locates in. One objective of PSD is to track air quality changes in clean air areas. If a major source significantly affects any clean air area in the same state the purposes of PSD will be served if air quality deterioration from minor/area source growth and actual changes in baseline source emissions are tracked from the time significant SO_2 or PM emissions from a new or modified major source impact a clean area. Such a policy is also consistent with the language of section 165(e)(1) of the Act which

This approach allows the flexibility requested by the commenters, but precludes "postage-stamp" designations designed to trigger baseline only in the immediate vicinity of the source. It also avoids the difficult area boundary problems which would arise from defining area as the PSD source impact area. States are cautioned to carefully weigh any inclination to postpone baseline dates through area redesignations against increased difficulties associated with tracking increment consumption.

C. State Monitoring Exemption

Alabama Power remanded to EPA that portion of the monitoring requirements which allowed states to accept less than one year of preconstruction monitoring data for cases in which a shorter period would be sufficient to perform a complete and adequate analysis. The court ruled that EPA had not provided adequate guidance to the states for making this determination. 13 ERC 1993, 2020.

The proposal contained concrete guidance for use by states in determining if less than one year of monitoring data is sufficient. That guidance provided that as little as four months of monitoring data for the criteria pollutants was acceptable if the applicant demonstrated that the maximum pollutant concentrations would occur within that time.

Fourteen comments were received on various aspects of this proposal. Thirteen commenters supported the flexibility of requiring less than one year of monitoring data under specified circumstances. Two commenters addressed ozone monitoring requirements where there were more than four months with average daily maximum temperatures greater than 20°C (68°F).

The Administrator has decided to promulgate the proposed regulations except for the following:

(1) Less than one year of monitoring data will be permitted for all regulated pollutants, rather than for just the criteria pollutants. However, it must be demonstrated through historical data or dispersion models that the data for such shorter periods of time, but not less than four months, will be obtained during a time period when maximum air quality levels can be expected.

(2) Guidance for monitoring ozone during the warmest four months of the year has been deleted. Monitoring for ozone, as well as other pollutants, will still be required during the time period when maximum air quality levels can be expected. Ozone concentrations will generally be higher during the warmest four months of the year. However, ozone

monitoring must also be conducted when the yearly maximum ozone concentrations are likely to occur during months other than the warmest four months of the year. This will ensure that ozone monitoring will cover the expected maximum concentrations.

XIX. Additional Issues

A. Innovative Technology

In the September 5, 1979, Federal Register the Agency proposed a new paragraph (u) which sets out specific requirements for reviewing sources that wish to utilize innovative control technologies. The new paragraph sets out criteria to be used by the Administrator in determining whether a proposed control technology is innovative, in addition to establishing specific provisions for implementing the BACT and modeling requirements.

All of the commenters recognized the need to encourage the development of technology and generally approved of EPA's approach. One large environmental group commented that while it approved of the added flexibility in specifying BACT for innovative technologies, it was concerned that Class I areas might be compromised if increment violations were allowed to occur during the period of testing. We share this concern of the environmental group and are today promulgating a regulation which ensures full protection of Class I areas.

Today's amendments provide that, for a source whose technology has been designated as "innovative" by the Administrator, the BACT requirement should insure the installation of the innovative system and the adoption of a compliance schedule for meeting a final emission limitation. This final emission limitation must at least represent the BACT level that would have been initially defined under § 52.21(j), assuming the use of proven state-of-the-art technology. The compliance schedule may extend no more than 7 years after permit issuance or 4 years after startup of the source. The regulations also provide that the Administrator may withdraw his approval if a source: (1) fails to meet the final emissions limitation by the specified date, (2) fails to protect the public health, welfare, or safety, or (3) shows an indication that the innovative control system will not be successful. The source will then be given a period of no more than 3 years to come into compliance with the BACT level determined with the use of the demonstrated system of control.

The September 5 Federal Register proposed that with the consent of the governor an "innovative technology"

source could conduct the increment impact analysis using the final emission limitation specified in the permit, provided that no interference with applicable NAAQS would result during the interim period. EPA reasoned that any increased level of emissions which might occur during the interim period would be temporary and would not significantly impact the increments. However, one of the commenters pointed out that Class I areas require protection even from temporary violations. We agree with the concerns of this commenter and cite § 52.21(i)(7) in their support. That section exempts temporary sources from the modeling requirements except when they impact Class I areas or areas where the increment is known to be violated. Today's regulations allow an "innovative" source to use its final emission limitation for increment modeling purposes, but only if there is no impact on any Class I area or any area with a known increment violation. As in the proposal, the final rules requiring modeling for the purpose of evaluating the impact on NAAQS must take into account interim emission projections. Under no condition may a source be approved if it would cause a violation of the NAAQS, even a temporary violation.

B. Modified Permits

In the September 5, 1979 Federal Register, EPA proposed to add a new paragraph (t) entitled "Modified Permits." The new paragraph provided a simplified approval procedure for sources that make minor changes in design capacity or in the nature of process equipment between the time they obtain a PSD permit and the time they complete construction. It also required prior approval, through permit modifications, of increases in hours of operation.

The comments on this section were mixed. Some commenters felt that the new paragraph was redundant and superfluous, while others generally approved of it but asked for clarification. Upon further consideration, the Agency believes that there is a need to distinguish between situations in which permits would be changed for primarily administrative reasons, such as a change to reflect a revised construction schedule, and situations in which the permit change involves a significant increase in emissions. In the latter case a new permit must be issued; in the former, however, an abbreviated procedure involving modification of the permit might be preferable. There are numerous issues to be considered in implementing

TESTIMONY

Department of Health and Environmental Sciences Prevention of Significant Deterioration (PSD)

Presented To:
Board of Health and Environmental Sciences
September 17, 1982

prior to 11/19/82 hearing

The following testimony is submitted on behalf of the Department of Health and Environmental Sciences. The purpose of the testimony is to outline the Department's position relative to the prevention of significant deterioration rules before the Board of Health and Environmental Sciences.

The Department's written testimony is essentially contained in the attachments listed below. Each attachment is designed to discuss various aspects of the PSD program. Since the program is quite complex, each attachment generally addresses a particular issue or class of issues relating to the program. The Department stands ready to answer any questions that might be presented as a result of the rule or testimony.

- Attachment 1 - History, Status, and Rule Explanation. This attachment contains a brief history, status, and explanation of the PSD rule. The rule is explained with regards to its operation and history and without any relation to proposed changes or suggestions.
- Attachment 2 - Issues Raised to the Department. This contains a very brief summary of all major issues which were considered by the Department when various drafts of the rule were proposed. These issues were raised by various commentators during this informal period. The result of the comments are listed, along with a brief explanation.
- Attachment 3 - PSD Policy-Related Items. This attachment contains a discussion of various policy items pertaining to the PSD program. This section is designed to address some of the policy items that result from the program but are not specifically addressed by the rule.
- Attachment 4 - Frequently Asked Questions about PSD. This attachment is an informal answer to questions that are usually asked about the program.
- Attachment 5 - PSD Court Settlement. This section presents the Department's views on the pending PSD case before the Court. The attachment describes the pending issues before the court and the position the Department has taken relative to those issues.

Attachment 2

PSD

Issues Raised to the Department

<u>Issue</u>	<u>Status of Issue</u>	<u>Comments/Justification</u>
1. The state rule should be no more stringent than Federal rule.	Deny	The rule is generally the same as the federal rule, but the rule must reflect state needs and characteristics as well as meet EPA requirements.
2. Wait for changes in Clean Air Act before proceeding with rule-making.	Deny	The current dual permitting situation in the state is unacceptable to the Department. The Department prefers to obtain delegation and then incorporate any changes in the Act as appropriate. Time uncertainties from Congress are also a factor.
3. Fugitive dust should not be counted in applicability for the non-28 listed sources.	Accept	This is consistent with Federal rules.
4. Change the applicability and/or consumption values to include only particles less than 15 or 10 microns.	Deny	Such a provision would not be acceptable to EPA at this time and would, therefore, jeopardize the approval of the program. EPA may have disapproved the program with the 30 micron cut-off proposed in the first draft.
5. Baseline area should not be entire state.	Accept	It was never intended by the Department to include the entire state for modeling or compliance. The latest drafts reflect the request.

smaller areas (i.e. areas triggered by major sources), not the entire state.

7. Reinstate the variance procedures for Class I areas.

Accept

The PSD rule has no effect in any area unless a baseline date is established. Large areas of Montana (over 99% by area) would not have any protection without the baseline date established. The department rejects the argument that a statewide date will hinder reasonable economic development. Nearby states, such as Wyoming, North Dakota, Washington, and Oregon all have a statewide baseline date. The issue is further discussed in Attachment 3.

8. Change federal land managers role to include all federal Class I areas, not just mandatory Class I areas.

Accept

All parties made this request and it has been accepted by the Department.

9. Allow a federal agency to make a request to the Department/Board for a redesignation.

Accept

The proposed rule allows the federal land manager to request redesignations of lands under the manager's control.

10. Require contested case proceeding of the Montana Administrative Procedures Act for redesignation.

Deny

The Department believes that the contested case proceedings are not appropriate for redesignations. A redesignation is more a policy issue than a contested case. The Board has always provided ample opportunity to ask questions about any rule-making issue. The Administrative Procedures Act will be followed, but only the rule-making provisions.

Since only used a simple screening model and chose to end the modeling process since no violations were found. Had the source used a more precise model, they might have found less increment consumption. Therefore, when the second source applies for a permit, it may be necessary to conduct this higher level of modeling since a screening model may show an increment violation. It also may be possible to permit the second source merely by being prudent about source location. If the two sources locate at appropriate distances from each other, then the short-term increment may be protected in space and time.

5. Baseline Date

The noticed rules provide for a baseline date on a statewide basis. The baseline dates, of course, only apply to areas which meet or exceed the national ambient air quality standards for sulfur dioxide or particulates.

If one studies the baseline date issue closely, it becomes clear that the method of establishing the date is central to the entire PSD program. Choosing a baseline date on a broad level, such as establishing the date for the entire state at one time, greatly broadens the overall scope of the program. Setting the date on a smaller area, such as the impact area of each major stationary source, limits the program to preventing significant deterioration essentially only from major sources. Setting the date on a county-by-county basis, on the other hand, sits somewhere between the two above examples.

Perhaps the differences between the alternatives can best be illustrated by some examples. Suppose that the baseline is established based upon only the area of impact from a major stationary source. This creates the following situations.

1. The area and date are set by a defensible mathematical model. The area is not arbitrary, but is limited to the exact area of impact.

2. The area would be difficult to keep track of from an administrative standpoint (although this should not be a primary reason for choosing one method as opposed to another). There could be many areas of varying sizes and dates which must be tracked by the Department. This may call for additional monies to run the program, depending, of course, on the complexity of tracking.
3. The baseline date is not established until a major source enters the area. This means that sources in the area which are in existence at the time of the application do not consume any of the increment. There is no increment consumption until the major source makes an application. In other words, PSD does not apply to any area of the state until a major source makes an application.
4. Most of Montana (area wise) would not come under any PSD review for some time, if ever. PSD would only apply to areas of impact from major stationary sources.

If the baseline date were established on a state-wide basis, the following situations could arise:

1. The area would be easy to track for the agency, since there would not be many baseline dates.
2. The baseline date could be set by some semi-arbitrary date, such as August 7, 1977 (the date the federal Clean Air Act was reauthorized), or by the date of the major stationary source since 1977. Either method has the same general effect.
3. Whenever the baseline is established, all sources, regardless of their size, will consume some of the available increment if they are constructed after the baseline date. This includes both small and large sources. A large facility wishing to construct in an area may not have the entire increment available if there has been an increase in ambient air concentrations since the establishment of the baseline date.
4. It would be more difficult to establish the baseline values in this instance since the facility may not have actual air quality data at or before the baseline date.

The selection of the appropriate baseline date method is not clear. There is apparently no right or wrong method. The method has a major impact on the perception of PSD. One method limits PSD to major stationary sources, while the other expands PSD to cover the entire state at one time.

The following table is a general discussion of the issues that surface as a result of the baseline date. The table is meant to be a frank discussion of the issues and not necessarily the opinion of the Department.

Reasons for establishing
State-wide baseline date

1. It is appropriate to set the baseline date by the entire state since it would protect the the entire population from significant deterioration of the air. To do otherwise establishes preferential treatment for one town, such as Scobey than another, such as Colstrip. Yet, the only reason for protecting one and not the other is that a major stationary source has been constructed in Colstrip.
2. The administration of a statewide date is much easier. It would be extremely difficult to track multiple areas and dates using other techniques.
3. A state-wide date would not necessarily restrict major stationary sources. large facilities are not likely to locate too close to a population center. Most facilities construct their plant a few miles from the major population centers or town centers. A review of air quality data indicates that the air pollution concentrations decrease dramatically as one increases the distance from the centers of towns. It is highly unlikely that a location cannot be found that would meet the objectives of the facility without violating increment values.

Reasons against establishing
State-wide baseline date

1. Establishing a state-wide date unnecessarily restricts the scope of PSD. PSD should be designed to protect against deterioration only from major stationary sources. Congress in their deliberations of PSD did not intend that the entire nation be triggered by one date. This issue was actually debated by the Congress. It would be unwise for Montana to do anything to the contrary.

The state-wide date may be easier to administer, but that should in no way be a factor unless it would throw the administrative agency into disarray. This would certainly not occur if smaller areas were used.

A state-wide date could restrict development of major stationary sources. Since small sources can consume increment, it is possible that the increment would be consumed prior to a major facility. This is an unnecessary restriction of the program.

The intent of Congress, i.e. setting baseline date of air quality control regions (or portions thereof) is not a relevant argument for Montana. Neither the Montana Legislature nor the Department of Health have embraced the Federal Clean Air Act. There is no reason to assume that just because Congress analyzed something from a national level, the state needs to do the same. The ambient standards process clearly indicates that the Department has no intention of necessarily marching in perfect step with EPA.

5. If the area is set by small areas, there will be essentially no protection of Class I areas, such as Glacier National Park and so forth.

A state-wide date is contrary to the wishes of Congress. Montana has no authority or reason to override the wishes of Congress. The issue was adequately debated in committee. In fact, one reason for the Alabama Power case was the baseline date issue. The court overturned EPA's decision to set a nation-wide baseline date.

There is already adequate protection of the Class I areas through secondary standards and visibility requirements. In any event, the purpose of the PSD program is to regulate degradation in the area of major stationary sources, not to provide blanket deterioration rules and dates.

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BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the repeal)	NOTICE OF THE REPEAL
of rules 16.8.901 through)	OF RULES 16.8.901-16.8.920
16.8.920 and the adoption of)	AND THE ADOPTION
new rules for the prevention)	OF RULES 16.8.921-16.8.943
of significant deterioration)	
of air quality)	(Air Quality)

To: All Interested Persons

1. On August 12, 1982, the board published notice of a proposed repeal of rules 16.8.901-16.8.920 concerning prevention of significant deterioration of air quality, and the proposed adoption of rules 16.8.921-16.8.943 concerning the same subject matter at page 1512 of the 1982 Montana Administrative Register, issue number 15.

2. The board has repealed rules 16.8.901-16.8.920 as proposed, and has adopted rules 16.8.921-16.8.943 with the following changes:

RULE I (16.8.921) DEFINITIONS For the purpose of this sub-chapter, the following definitions apply:

(1) - (5) Same as proposed rule.

(6) "Baseline date" means:

(a) for sulfur dioxide:

(i) March 26, 1979, for sulfur dioxide or March 19, 1982, for particulate matter for all areas designated as attainment or unclassified under 40 CFR 81.327;

(ii) for all other areas, the date upon which the area is designated as attainment.

(b) for particulate matter, for each baseline area, the date of the first complete application after August 7, 1977, to construct a stationary source or modification which is major for particulate matter and which is subject to this sub-chapter or required to obtain a permit under Part C of the federal Clean Air Act.

(7) - (31) Same as proposed rule.

RULES II through XXIII (16.8.922 - 16.8.943) Same as proposed rules.

3. The Montana Power Company was concerned about the inclusion of "fuel cleaning, treatment, or innovative fuel combustion" in the definition of BACT.

Response: The Board has chosen to use a definition nearly identical to the federal definition. Vol. 45, FR 52726 (August 7, 1980) provides guidance to the acceptability of a state-operated program, and states that PSD definitions must closely follow the federal definitions, but need not be verbatim translations. The phrase "fuel cleaning..." is included to ensure consistency with the federal rules.

The Montana Power Company also felt that Rule II (determination of BACT) should be modified to state that the decision

board has not included those unique visibility requirements in the rule. The submittal of the PSD rule as a SIP modification will not include a request to approve the Montana visibility program. The visibility issue will be dealt with at a later time.

The Consolidation Coal Company suggested a change in the definition of "actual" emissions to include sources in existence or with a complete permit application on or before the baseline date.

Response: The board notes that since an impact area definition of baseline date was finally adopted, the question is moot. There are no sources with pending or complete permits in which increment consumption is of issue. Therefore, the requested change is unnecessary.

Many commentators argued that the definition of "baseline date" should be modified to apply only to an impact area, while many others argued it should remain a state-wide date. The majority of testimony received on the PSD rules in fact revolved around the definition of baseline date. Those in favor of an impact area date argued that: (a) the impact area is a defensible mathematical model for determining a baseline date rather than statewide, which is arbitrary; (b) the statewide baseline date is unduly restrictive of growth, while the impact area date leaves open room for future development; (c) the impact area date is easier to administer; (d) since there is already sufficient protection of Class I and other special areas, an all-encompassing state-wide date is not necessary; and (e) the state-wide date is contrary to the wishes of Congress. Those in favor of a state-wide date argued that: (a) the state-wide baseline date is the only method which actually protects nearly all of the state from significant deterioration of air quality, and any other method fails to actually implement the program; (b) the state-wide date is easier for the department to administer; (c) a state-wide option would not restrict major growth; (d) there is no real protection for Class I areas since a baseline date would not be established; and (e) since Congress only set minimum standards for PSD, the state-wide option is within the scope of the federal intentions for the program.

Response: The board chose to accept or reject each argument within the context of the two pollutants regulated under PSD--sulphur dioxide and particulate matter. Since sulphur dioxide is generally well-defined in terms of emission sources and tracking, the board believed a state-wide program is the most effective option for it, which at the same time would not improperly restrict development. Particulates, on the other hand, are ubiquitous in nature and their contributors are expensive to pinpoint in compliance and enforcement actions. The board believed, therefore, that the impact area date was the proper choice for particulates since it can more effectively be handled in terms of administration, compliance,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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NOV 27 1998

Ref: 8P-AR

Robert Raisch, Chief
Resource Protection Planning Bureau
Planning, Prevention & Assistance Division
Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Enclosure missing
Page # 2 (512412616)

Dear Bob:

I am writing to follow up on some issues that were raised on our November 4th conference call regarding the State's proposed redesignation of its section 107 unclassifiable/attainment areas. First, EPA would like to respond to the information provided by the State on its interpretation of the definitions of "baseline area" and "minor source baseline date" under its current regulations for prevention of significant deterioration (PSD). During the November 4th call, your staff noted that they agreed with our October 14, 1998 letter in that, at the time of original adoption, the State had intended to implement a Statewide minor source baseline date for the sulfur dioxide (SO₂) and nitrogen dioxide (NO₂) PSD increments and had only intended to implement a source impact area baseline date for the total suspended particulate (TSP) increments. However, the State claimed that, in 1993, when it revised its definitions of "baseline area" and "minor source baseline date" to be basically identical to the Federal definitions (in 40 CFR 51.166(b)(15) and (b)(14)(ii), respectively), its intent was to change from Statewide baseline dates to source impact area baseline dates for NO₂ and SO₂ as was originally intended for TSP.

The State's reasoning, as we understand it, for assuming that all parties understood the State's intent in 1993 to change to source impact area baseline dates for NO₂ and SO₂ was that the revised State definition of "baseline area" was similar to the State's 1982 definition of "baseline area" for TSP, which the State believed adequately provided for source impact area TSP baseline dates. However, the State also admitted on the November 4th call that there was no discussion of the State's change for implementing the minor source baseline date for NO₂ and SO₂ in the public hearing notice, before the Montana Board of Health and Environmental Sciences (MT BHES), or to EPA in the Governor's State Implementation Plan (SIP) submittal. In addition, the State's interpretation of "baseline area" as providing for source impact area baseline dates is radically different from EPA's interpretation of the same terms. Since the State's definitions are patterned after EPA's, this divergence in interpretation is difficult to understand.

EPA does not agree with the State's interpretation of its 1993 regulation revisions, and we do not believe this interpretation could be legally defended by the State. Further, as



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previously discussed in our October 14, 1998 letter, the concept of providing for source impact area baseline dates by definition is not allowed under the Federal PSD rules or in State rules approved under the SIP process. We have included a detailed explanation of why we disagree with the State's position in the enclosure to this letter. We believe the State must abide by the interpretation of its current regulations discussed on page 3 of Enclosure I of our October 14, 1998 letter, i.e., that the minor source baseline date was triggered either in 1/79 or on 3/26/79 for PM-10 for the "Rest of State" particulate matter unclassifiable area (depending upon whether the PSD permit for either Asarco-Troy or Spring Creek Coal can be rescinded), on 3/26/79 for SO₂ for the "Rest of State" SO₂ attainment area, and 1/10/90 for NO₂ for the "Entire State" NO₂ unclassifiable/attainment area. The State's different interpretation of these important PSD terms makes us concerned that the State may have ignored suspected violations of the PSD increment by minor or area sources. Please note that, if the State or EPA finds that an applicable increment is being violated, 40 CFR 51.166(a)(3) requires the SIP to be revised to correct the violation within 60 days of such a finding by the State or notice from EPA.

We would also like to address another point that was made by the State during our November 4th conference call and during the November 16th Clean Air Act Advisory Council (CAAAC) meeting. Specifically, your staff asserted that Congress intended the PSD increments to be implemented only in the 1 ug/m³ impact areas of PSD sources. We disagree with that assumption. Section 161 of the Clean Air Act (CAA) requires each SIP to contain emission limitations and such other measures as may be required to prevent significant deterioration of air quality in each region designated pursuant to section 107 as attainment or unclassifiable. The PSD increments are the mechanism that Congress set up to achieve this goal, and the PSD permitting program was set up as the principal mechanism for implementing these increments. However, the legislative history as well as the 1980 Alabama Power decision make it clear that the PSD permitting program is not the *only* mechanism that may be necessary to protect the PSD increments. [See *Alabama Power Co. v. Costle*, 636 F.2d 323 at 361-364 (D.C. Circuit 1979).] In addition, Congress clearly intended special air quality protection for national parks and wilderness areas, as is evident in section 160(2) which describes the purpose of part C of the CAA as, in part, to "preserve, protect, and enhance the air quality in national parks, national wilderness areas...." Considering that very few PSD sources locate in or near Class I areas (because they are usually surrounded by Federal land), it would not be reasonable for Congress to set up special increments and protections for Class I areas if Congress intended, as the State contends, for the increments to only apply in the impact area of each PSD source.

Regarding the State's proposed redesignation and Class I areas, I want to elaborate on an additional issue which we mentioned briefly in our September 1998 meeting with you. Specifically, this pertains to the forthcoming promulgation of more restrictive ambient significance levels for Class I areas. On July 23, 1996, EPA proposed revisions to its PSD regulations including, among other things, specific PSD ambient significance levels to determine if new PSD sources would be required to conduct a comprehensive Class I

increment analysis for a given pollutant. (See 61 FR 38291-3, enclosed). In the proposed rulemaking, EPA proposed for public comment two options for significance levels for each of the three pollutants with PSD increments; one set of values was recommended by EPA and the other set of values was recommended by the Federal Land Managers (FLMs). These levels ranged in value from 0.03 to 0.2 ug/m³ annual average (depending on the pollutant and the specific agency's recommendations), which are much smaller than the 1 ug/m³ source impact level that currently applies to section 107 area designations. EPA's Office of Air Quality Planning and Standards (OAQPS) is currently considering whether these significance levels should also apply to section 107 area redesignations affecting Class I areas. If EPA finalizes this position, the impact area for sources impacting Class I areas would be based on a much lower ambient concentration rather than the 1 ug/m³ impact. This, in turn, would impact what areas the State could redesignate as separate section 107 areas to untrigger the minor source baseline date. This issue is still being debated by OAQPS, and we will notify you as soon as a decision is reached.

The Region is also discussing the State's proposed redesignation with OAQPS and the Office of General Counsel (OGC) to determine whether a demonstration might be required under section 110(l) of the CAA in order for EPA to approve the State's proposed section 107 area redesignation request. We recognize the State's point that, in parts of the State where emissions have decreased considerably due to source shutdowns or due to implementation of State/Federal requirements, the baseline concentrations may be set at lower levels under the State's redesignation when compared to the baseline concentration in 1979. However, we do not have reason to believe that this is the situation in every part of the State (and our concern is obviously in the locations where significant increment consumption has already occurred). In addition, we have no idea when or if the minor source baseline date will be triggered for the majority of the State in the future because, under the State's proposal, it will only be triggered in those 100 km² areas where a PSD source locates or produces a 1 ug/m³ impact. It seems that the State receives approximately one PSD permit application every 1-2 years, and most of these PSD sources will probably only impact (based on refined modeling) a few of the 100 km² areas (out of the more than 4000 areas in the State).

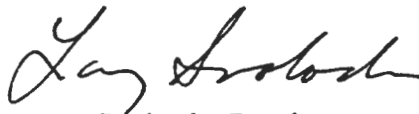
Thus, while baseline concentration may have decreased in many parts of the State, it could very well increase by the time the minor source baseline date is set again for most parts of the State - especially for the air over Federal lands where PSD sources don't often locate, but mining and oil/gas drilling do occur. This uncertainty about future growth in emissions is why it is difficult for EPA to feel comfortable with the State's proposal based on the information available today; it may well be that the air quality has not deteriorated significantly in most of the State as of today, but we have no way of knowing what growth may occur in the State in the future. If the State adopts its current proposal and then realizes at some point in the future that it is experiencing a lot of minor source growth in areas not impacted by PSD sources (thus, with no minor source baseline date or applicable increment), the State will have difficulty changing the implementation of its PSD program to address the problem. This is also why EPA is having a difficult time determining what demonstration, if

any, might be required under section 110(l) of the CAA for the State's redesignation. Nonetheless, it would be helpful to have the emissions trends information which the State committed to gather during the November 16th CAAAC meeting.

We were glad to know that the State has begun to involve the FLMs in the process and that the State is receptive to the idea of keeping increment protection for the Class I and other sensitive areas. To assure that the FLMs fully understand the proposal, it would be a good idea to send a copy of the maps of the source impact areas and the State's draft redesignation request to each of the FLMs who participated in the November 16th CAAAC meeting. We also appreciate your keeping us informed of the meetings you have planned.

As soon as we have further information on the section 110(l) requirements or the Class I ambient significance levels, we will let you know. We would also appreciate hearing from you if there are any changes in your proposed redesignation pursuant to your discussions with the FLMs, industry groups, or the public. If you have any questions regarding this letter, please contact me at (303) 312-6004, or have your staff contact Vicki Stamper at (303) 312-6445.

Sincerely,



Larry Svoboda, Leader
Air Quality Planning and Management Unit

Enclosures

cc: Jan Sensibaugh, Permitting and Compliance Assistance Division, MT DEQ
Chuck Homer, Permitting and Compliance Assistance Division, MT DEQ
Bob Habeck, Planning, Prevention and Assistance Division, MT DEQ

Enclosure

The following discussion explains why EPA cannot agree with the State's interpretation that, when it changed its definitions of "baseline area" and "minor source baseline date" in 1993 to track the Federal definitions, the regulation revisions allowed the State to implement the minor source baseline dates for SO₂ and NO₂, as well as PM-10, on a source impact area basis:

First, the language of the State's current definition of "baseline area" as adopted by the MT BHES in 1993 is substantially different from the State's previously adopted definition of "baseline area" (as adopted in 1982). The State's 1982 definition of "baseline area" read as follows:

"Baseline area means any intrastate area in which a major stationary source or major modification would have an air quality impact equal to or greater than one microgram per cubic meter, annual average, and such area is designated as attainment or unclassifiable under 40 CFR 81.327."

Contrary to the State's interpretation, EPA does not believe that the State's 1982 definition of "baseline area" clearly provided for source impact area baseline areas. The logical reading of the definition is that the baseline area is any intrastate area that is designated as attainment or unclassifiable under 40 CFR 81.327 in which the PSD source would have an impact equal to or greater than 1 ug/m³ - in which case the baseline area would be defined in terms of the 40 CFR part 81 area designations. In addition, providing for source impact area baseline areas by definition would be inconsistent with EPA's PSD regulations and the intent that States must go through the section 107 area redesignation process to redefine baseline areas. (See 45 FR 52726, 3rd paragraph of 3rd column; August 7, 1980.)

EPA believes that the revisions to the definition of "baseline area" adopted by the State in 1993 clarify the Federal requirement (i.e., that section 107 area redesignations are needed to redefine baseline date) and supports EPA's interpretation. The State's 1993 definition of "baseline area," with the major changes in wording from the 1982 definition underlined, reads as follows:

"Baseline area means any intrastate area (and every part thereof) which is designated as attainment or unclassifiable in 40 CFR 81.327 in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the minor source baseline date is established."

This revised definition rearranged the phrases in such a way that it is difficult to understand how anyone could interpret the definition any differently than EPA's interpretation of the State's 1982 definition. The State's revised definition clearly states that the baseline area is

Thus, the State deleted the Statewide baseline dates for NO₂ and SO₂, as well as the language for PM, and adopted the exact same language as in the Federal definition in 40 CFR 51.166(b)(15)(ii). Nowhere in the State's definition does it state that a minor source baseline date is only set for a source impact area. As discussed in our October 14, 1998 letter as well as in the attached letter, the effect of this change in definition was that the minor source baseline date would now be the date of the first complete PSD permit application after the applicable "trigger date" for an applicable baseline area - i.e., either 1/79 or 3/26/79 for PM for the "Rest of State" particulate matter unclassifiable area, 3/26/79 for SO₂ for the "Rest of State" SO₂ attainment area, and 1/10/90 for NO₂ for the "Entire State" NO₂ unclassifiable/attainment area. This does not represent any change from the Statewide SO₂ baseline date previously specified in the State's 1982 PSD regulations, nor does it represent any change from EPA's interpretation of baseline date for PM under the State's 1982 regulations. It does, however, represent a change in the definition of minor source baseline date for NO₂ from February 8, 1988 to January 10, 1990. At the time of review of the State's 1993 PSD changes, EPA did not recognize this change in the NO₂ minor source baseline date. Such a change should have been noticed to the public and to the MT BHES.

Along those same lines, EPA believes that the complete lack of public notice or notice to the MT BHES regarding the State's purportedly planned change in the implementation of minor source baseline date for SO₂ and NO₂ calls further into question the validity of the State's contention regarding the 1993 definitional changes. The lack of public/MT BHES notice seems especially relevant considering that the MT BHES had labored over the decision to have statewide versus impact area baseline dates in the past. Further, you agreed at our September 1998 meeting that the State needed to go through a public process to redesignate as currently planned into more than 4000 10 km x 10 km areas. Why would the State take this position now if the State believed the 1993 revisions to its PSD regulations, with no public or MT BHES knowledge or input whatsoever, effectively revised the State's rules to provide for source impact area baseline areas and dates? Definitions of terms are the heart of regulatory programs. EPA does not believe the State should be able to change a definition to apparently make it more consistent with the Federal definition while, at the same time, intending to implement it in a radically different way without specific public notice and discussion of the State's intent.

In summary, EPA does not agree with the State's interpretation of its PSD definitions, and we strongly doubt that such an interpretation could hold up to legal challenge. We believe the State must implement its regulations as they are written (i.e., that the minor source baseline date was triggered either in 1/79 or on 3/26/79 for PM-10 for the "Rest of State" particulate matter unclassifiable area, on 3/26/79 for SO₂ for the "Rest of State" SO₂ attainment area, and 1/10/90 for NO₂ for the "Entire State" NO₂ unclassifiable/attainment area.

implementation of mitigating offsets, the EPA declines to recommend rigid tests for assessing the adequacy of offsets. Rather, the EPA proposes that general principles already established under the PSD program guide the implementation of offsets. In addition, the EPA is proposing to add a provision to the PSD regulations that explicitly provides what EPA has previously acknowledged—that sources may mitigate an adverse impact on AQRV in order to obtain a PSD permit.⁶⁶ See proposed §§ 51.166(p)(7) and 52.21(p)(7).

The proposed provision specifies that PSD programs shall allow for mitigation by a proposed source and specifically provides that the permitting authority may issue a permit for a proposed major source or major modification that would otherwise be denied a permit because of an adverse impact on AQRV, if the permitting authority determines, in consultation with the FLM, that the source has mitigated the adverse impact on AQRV. The EPA believes that sound technical evidence should support a demonstration of mitigation. The demonstration should show that there will be no net adverse impact as a result of the proposed source's emissions. The proposed provision specifically acknowledges offsets as a mitigation option where the owner or operator of a proposed source obtains enforceable and permanent emissions reductions of sufficient amount and in such location that the reductions will offset the change in air quality in the Federal Class I area that would have resulted from the proposed source. See proposed §§ 51.166(p)(7) and 52.21(p)(7). The quantitative amount of the offsetting emissions should, therefore, be shown to be sufficient to in fact mitigate the adverse impact on AQRV that would otherwise be caused by the proposed emissions increase. This will involve consideration of the location of the offsetting source relative to the Class I area, as well as the meteorological and topographical conditions which affect dispersion of the offsetting emissions.

Another possible consideration in evaluating whether any potential emission reductions identified at existing sources can be used to mitigate the adverse impact on any AQRV is whether the reductions are already required by some other Act-mandated program. In nonattainment areas, section 173(c)(2) of the Act plainly prohibits emission reductions otherwise required under the Act from being

credited as offsets for new source review purposes.⁶⁷

Unlike the nonattainment NSR program, offsets under the PSD program are not expressly addressed by the Act. The EPA is interested in the public's views about the crediting of those emission reductions already required for other purposes as offsets for mitigating a proposed source's adverse impact on an AQRV.

As an alternative to emissions offsets, a more stringent emission limitation than the limitation that would otherwise be required by BACT may be established to mitigate an adverse impact on an AQRV in a Federal Class I area. Depending upon the remaining emissions released and the sensitivity of the AQRV of a Class I area, an emissions limitation that would otherwise be required by BACT, if an adverse impact on an AQRV was not considered, may be inadequate to entirely mitigate the adverse impact. Thus, emission offsets, a stricter emission limitation, or some combination of both, may be appropriate to mitigate an adverse impact on an AQRV.

The EPA believes that measures such as emission offsets from existing sources represent a reasonable approach which enables the mitigation of an adverse impact on an AQRV. The EPA's mitigation policy provides needed flexibility to the PSD permitting process by allowing a new major source or major modification that mitigates an adverse impact on AQRV to receive a construction permit, even though its proposed emissions increase is otherwise demonstrated by the FLM, and concurred with by the permitting authority, to have an adverse impact on AQRV. The adoption of this policy is also intended to promote dispatch in the PSD permit process by providing a clearly available elective recourse enabling applicants to avoid potentially contentious and protracted permitting disputes where the FLM demonstrates an adverse impact on AQRV and the applicant wishes to mitigate its demonstrated impacts prior to a formal concurrence with the demonstration by the permitting authority.

c. *Post-construction Monitoring.* The CAAAC recommendations addressing mitigation of an adverse impact on AQRV included consideration of post-construction monitoring for Class I areas. Post-construction monitoring alone would not directly mitigate an adverse impact on AQRV. However,

such monitoring may provide critical information about a source's impact on a Class I area.

The EPA is proposing to amend its PSD regulations to clarify that post-construction ambient monitoring may be required for the purpose of determining the effect emissions from a facility may have, or are having, on AQRV in a Federal Class I area. The existing PSD regulations at §§ 51.166(m)(2) and 52.21(m)(2) currently require the owner or operator of a new major source or major modification to conduct such post-construction ambient monitoring, as the permitting authority determines to be necessary, to determine the effect emissions may have, or are having, on air quality in any area. However, the current EPA regulations do not specify that such ambient monitoring may include the monitoring of air quality-related impacts in Federal Class I areas. The EPA is, therefore, proposing to amend the PSD regulations to specifically state that post-construction ambient monitoring may be required in Class I areas. See proposed amendatory language for §§ 51.166(m)(2) and 52.21(m)(2). The EPA requests comments on this proposed regulatory change.

4. Class I Significant Impact Levels

Some members of the NSR Reform Subcommittee recommended that the EPA provide criteria indicating the circumstances in which a proposed source's projected contribution to ambient concentrations in a Class I area may be considered de minimis for certain planning requirements. These members recommended that the EPA identify a level of contribution (ambient concentration) that is de minimis, or insignificant, so that a proposed source having a contribution less than that concentration will know with certainty that it will not be subject to the full requirements for an increment analysis in Class I areas. The EPA believes that it is reasonable to extend the use of significant impact levels to the Class I increments. Levels of significant impact are currently used as a matter of policy in the PSD program for determining whether a proposed source may be excluded from certain requirements (e.g., significant emissions rates, and significant monitoring concentrations).⁶⁸

⁶⁶ For example, under the PSD regulations, a comprehensive preconstruction review must be conducted for each regulated pollutant that a proposed major source or major modification will have the PTE in "significant" amounts, as defined in existing section 51.166(b)(23)(i) and 52.21(b)(23)(i). Under existing section 51.166(i)(8)

⁶⁷ Incidental emission reductions not otherwise required by the Act are to be creditable under section 173(c)(2) of the Act. See also 57 FR 13553 (April 16, 1992) (guidance on creditable reductions under the nonattainment NSR program).

⁶⁸ See *Multitrade* at p. 7-8, n.5.

See, also, discussion in section IV.C.5.a. of this preamble, addressing the proposed codification of significant impact levels for NAAQS and Class II and III increments.

Administrative agencies may exempt "truly de minimis" situations from a statutory command "when the burdens of regulation yield a gain of trivial or no value."⁶⁹ Accordingly, the EPA is proposing to add significant impact levels for Class I increments to both sets of PSD regulations. See proposed §§ 51.166(b)(23)(v) and 52.21(b)(23)(v). The proposed significant impact levels would apply to the existing Class I increments for PM-10, SO₂, and NO₂ in the PSD regulations. The significant impact levels would be used to determine whether a new major source or major modification, due to the predicted ambient concentration from its own emissions, would be required to conduct a comprehensive Class I increment analysis for a given pollutant.

A de minimis impact resulting from the emissions from a proposed source would serve as the basis for a determination that such emissions will not contribute to a violation of the applicable Class I increments.

The proposed significant impact levels for Class I increments were derived by taking four percent of the concentration defined for the existing Class I increment for each applicable pollutant and averaging period. The EPA believes that where a proposed source contributes less than four percent to the Class I increment, concentrations are sufficiently low so as not to warrant a costly and detailed analysis of the combined effects of the proposed source and all other increment-consuming emissions. The EPA previously used a similar rationale to establish the significant emissions rates for PSD applicability purposes, concluding in part that emissions rates which resulted in ambient impacts less than four

percent of the 24-hour standards for particulate matter and SO₂ were sufficiently small so as to be considered de minimis.⁷⁰

It should be noted that, while the FLM representing the National Park Service and the U.S. Fish and Wildlife Service agree that the general use of significant impact levels for Class I increments may be appropriate, they have indicated that such levels should be adequately conservative. These FLM have, in fact, recommended significant impact levels that are more restrictive than those being proposed today by EPA. Their recommended levels were developed using the ratios derived from a comparison of existing significant impact levels—used by EPA for NAAQS and Class II increment analyses—and the respective NAAQS. For comparative purposes the significant impact levels being proposed today by EPA and the levels recommended by the FLM are shown below.

Pollutant	Averaging time	Levels proposed by EPA (ug/m ³)	Levels Recommended by FLM (ug/m ³)
Sulfur Dioxide	Annual	0.1	0.03
	24-hour	0.2	0.07
	3-hour	1.0	0.48
Particulate Matter	Annual	0.2	0.08
	24-hour	0.3	0.27
Nitrogen Dioxide	Annual	0.1	0.03

The EPA wishes to emphasize that the specific significant impact levels that it is proposing today for the Class I increments are not intended to serve as thresholds for determining the need for an AQRV analysis or whether an adverse impact on AQRV will occur. An adverse impact on AQRV in a Class I area depends upon the sensitivity of the particular AQRV and involves an assessment of potential harm. An ambient pollutant concentration that is deemed to be of relatively insignificant consequence for purposes of increment consumption should not automatically be considered inconsequential relative to the inherently fact-specific demonstration upon which an adverse impact on AQRV is to be based. Thus, a notice may be filed (as described in section IV.C.1.c. of this preamble) alleging that a proposed source's emissions may cause or contribute to a change in the air quality in a Federal Class I area and identifying the potential adverse impact of such change. The fact that such source's predicted ambient

impact is less than the applicable significant impact level for Class I increments would neither relieve the applicant from having to complete an analysis of impacts on AQRV nor automatically allow the permitting authority to reject the FLM's demonstration of adverse impact on AQRV. The EPA requests comments on its proposal to establish significant impact levels for Class I increments in general, and the proposed levels in particular.

The EPA is declining to propose specific significance levels for determining whether the emissions from a proposed source may have an adverse impact on AQRV. The FLM is specifically entrusted by the Act with protecting AQRV and the decision to establish any appropriate significance levels for AQRV should be made primarily by the FLM. Conceptually, such significance levels would represent ambient air pollutant concentrations or deposition rates below which only de minimis effects on AQRV will occur.

Accordingly, emissions increases not resulting in ambient concentrations or deposition rates exceeding the prescribed significance levels would therefore be excluded from a review of AQRV impacts.

The EPA generally recognizes the administrative benefits of categorically eliminating certain pollutant-emitting activities from regulatory review and has employed significance levels in other contexts in the NSR program, including the significance levels proposed above for Class I increments. However, there are many obstacles to formulating reasonable significance levels in the AQRV context. For example, there are numerous AQRV and there is a wide variance in sensitivity to emissions increases for particular AQRV.

The FLM have been working with other air pollution effects scientists to develop lists of sensitive resources (e.g., species of plants and invertebrates, and particular streams and lakes) and sensitivity thresholds that could help

and section 52.21(i)(8), the permitting authority may exempt a proposed source from having to include ambient monitoring data in its permit application for a particular pollutant if the

applicant's air quality impact for such pollutant is less than the "significant" concentration prescribed in the regulations.

⁶⁹ *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979).

⁷⁰ See 45 FR 52676, 52707-52708 (August 7, 1980).

establish significant impact levels for individual AQRV in the future. However, many studies conducted to date have not yielded the information needed to establish a critical threshold level from which a significance level could be derived. The EPA encourages the FLM to continue pursuing research on AQRV effects, and anticipates an evolving process by which research and information may eventually support the establishment of site specific significance levels for individual AQRV. Any significant impact levels for AQRV may necessarily be site specific since each AQRV and its associated critical pollutant loadings may be different from one area to another and even within individual Federal Class I areas. In any event, EPA encourages the establishment of an electronic database about Class I area resources, described elsewhere in this preamble, that will make information about available research on AQRV effects more accessible.

The EPA requests public comment on the issue of significance levels for AQRV. In particular, EPA is interested in suggestions regarding alternative approaches that promote regulatory certainty by excluding from consideration proposed sources that have truly de minimis impacts on Class I resources while still ensuring that AQRV are adequately protected in the PSD permitting process. Commenters should fully consider the legal standards that govern the establishment of de minimis regulatory exemptions. See e.g., *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979).

5. Clarification of Miscellaneous Issues

The discussion which follows addresses several relatively discrete issues. The EPA is clarifying current policy in areas where there is potential for significant confusion or uncertainty and, in some instances, is proposing conforming changes to the implementing regulations. The EPA is also proposing changes that largely codify existing policy.

a. Significant Impact Levels for NAAQS and Class II and III Increments. The EPA is proposing several changes to the PSD regulations at both §§ 51.166 and 52.21 to make the rules consistent with current practice. First, the EPA is proposing to revise the provisions of existing §§ 51.166(k) and 52.21(k) to clarify that a source's own emissions must make a "significant contribution" to a violation of any NAAQS or PSD Class II or III increment before that source would be denied a PSD permit. See proposed amendatory language for §§ 51.166(k) and 52.21(k). Second, the

EPA is proposing to incorporate into the PSD regulations the significant impact levels currently set forth at § 51.165(b)(2)—which are being used to determine whether major new source or major modification contributes to a violation of a NAAQS—so that they may be directly applied to the "significant contribution" test in the PSD regulations. See proposed §§ 51.166(b)(23)(iv) and 52.21(b)(23)(iv). The EPA has long interpreted the "significant contribution" test set forth in existing § 51.165(b)(2) to apply to PSD sources, as well, since the provision applies to major new sources and major modifications located in attainment and unclassifiable areas.

Finally, the EPA is proposing to add significant impact levels for the Class II and Class III increments. See proposed §§ 51.166(b)(23)(v) and 52.21(b)(23)(v). The proposed levels are the same as those levels at existing § 51.165(b)(2), which define a significant contribution to a violation of the NAAQS, and simply codify current EPA policy which allows the significant impact levels from § 51.165(b)(2) to be directly applied to the PSD program to determine a significant contribution to either the NAAQS or PSD increments. The EPA requests comment on the need to include these significant impact levels in the PSD regulations and the need for significant impact levels for Class II and Class III increments. Furthermore, the EPA requests comment on the proposed significant impact levels for the Class II and Class III increments, specifically whether they should be lower than the levels used for NAAQS compliance.

b. Analysis of Impacts on Federal Class II Areas. This proposal also clarifies the requirement for the "additional impact analysis" under § 51.166 and 52.21. In addition to the central requirements that each PSD source must demonstrate that its allowable emissions will not cause or contribute to a violation of any NAAQS or PSD increment, each such source is generally required to prepare further analyses for the pollutants that it will emit. Such "additional impact analysis" is consistent with the statutory provisions under section 165(e)(3)(B) of the Act, and includes an assessment of the impairment of visibility, soils, and vegetation within the proposed source's impact area, including Federal Class I and II areas. See proposed amendatory language for §§ 51.166(o)(1) and 52.21(o)(1). In addition, the EPA is proposing more specific provisions for Federal Class I areas that require similar analysis where a FLM alleges that an adverse impact on AQRV may occur in Federal Class I area lands located

beyond the area normally considered to be within the proposed source's impact area. See proposed §§ 51.166(p)(2)(i)(A)(2) and 52.21(p)(2)(i)(A)(2), and related discussion in section IV.C.1.c. of this preamble.

The FLM have expressed concern that the existing provisions, see, e.g., existing § 51.166(o)(1), which enable the applicant to exclude from analysis any impact on vegetation "having no significant commercial or recreational value," could exclude the analysis of certain vegetation with ecological significance in the lands under their jurisdiction, i.e., Federal Class I and II areas. The EPA is proposing a change in the existing provisions so that applicants may not presume that soils and vegetation in Federal Class I and II areas are of no significant commercial or recreational value, except where the FLM indicates that such analysis is not needed. See proposed amendatory language for §§ 51.166(o)(1) and 52.21(o)(1).

c. Clarification of PSD Requirements Applicable to Non-Federal Lands Redesignated as Class I Areas.

Individual CAAAC members and Tribal representatives have asked the EPA to provide guidance on the PSD provisions that apply to "non-Federal" reservation lands that are redesignated as Class I areas.⁷¹ In particular, guidance has been requested concerning whether AQRV may be established for such lands and how these values are to be protected under the PSD program. The discussion below is intended to clarify the EPA's views on these issues and to describe the accompanying, largely technical, regulatory revisions that the EPA is today proposing. The policies described in the following discussion would also apply to non-Federal State lands redesignated as Class I areas.

(1) Redesignation of Class I Areas. Section 164(c) of the Act gives federally-recognized Indian Tribes⁷² broad authority to request redesignation of lands within the exterior boundaries of

⁷¹ Lands within reservation boundaries may be Federal lands under Federal Indian law and may or may not be "Federal lands" within the specific meaning of the PSD program. "Federal lands" under the PSD program include: national wilderness areas, national memorial parks, national parks, national monuments, national reserves, national seashores and other similar national public land areas. See, e.g., sections 160(2), 162(a) and 164(d) of the Act. The term "non-Federal" is used here to refer to State lands or lands within the boundaries of an Indian reservation that are not Federal lands within the meaning of the Act's PSD program.

⁷² See section 302(r) of the Act. The Department of the Interior periodically publishes a list of Tribes officially recognized by the Federal government. See 58 FR 54364 (Oct. 21, 1993).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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MAR 1 - 1999

Ref: 8P-AR

Robert Raisch, Chief
Resource Protection Planning Bureau
Planning, Prevention and Assistance Division
Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Dear Bob:

I am writing to follow up with you on some issues regarding the State's planned redesignation of its prevention of significant deterioration (PSD) baseline areas. Specifically, we understand that the National Park Service (NPS) and the Fish and Wildlife Service (FWS) submitted comments to you on the State's planned redesignation of unclassifiable/attainment areas on January 25, 1997. EPA has reviewed that letter, and we believe the Federal Land Managers have raised some valid concerns that should be addressed by the State before moving forward with scheduling a public hearing for State adoption of the area redesignations under section 107 of the Clean Air Act.

The NPS and FWS requested verification of the State's position that emissions have decreased in the State since the original minor source baseline dates for sulfur dioxide (SO₂), particulate matter (PM), and nitrogen dioxide (NO₂). EPA believes this information would also be useful in determining the extent to which this redesignation represents a SIP relaxation. It would be especially helpful to know if these emissions reductions have occurred throughout the State, or if there are any areas in the State that may have seen emissions increases since the original minor source baseline dates were triggered. Thus, when the State completes this analysis, EPA requests that a copy be sent to our office as well as to the NPS and FWS.

The NPS and FWS also requested that the State perform increment analyses for all NPS and FWS Class I areas both for the original minor source baseline dates for SO₂, PM, and NO₂ as well as for later baseline dates which the State believes are more protective. EPA believes this request was based on the discussion at the November 4, 1998 Clean Air Act Advisory Council (CAAAC) meeting, at which the State offered to consider keeping the minor source baseline dates triggered for the Class I areas in the State as of 1993 (i.e., when the State revised its definitions of "baseline area" and "minor source baseline date") rather than the originally established baseline dates. If the State were to establish new minor source baseline dates that are later than the minor source baseline dates originally triggered for SO₂, PM, and NO₂ in the State, then such dates would have to be clearly specified in Montana's PSD rules and approved into the SIP. (Otherwise, the legally established dates would continue to be determined by the State's



definitions of "minor source baseline date" and "baseline area," which tie the minor source baseline date to the date of the first complete PSD permit application for a source proposing to locate in or significantly impact an area designated as attainment or unclassifiable under section 107 of the Clean Air Act). If the State ultimately decides to establish different minor source baseline dates for the Class I areas in the State, then the demonstration requested by the NPS and FWS would also suffice to demonstrate to EPA whether the new minor source baseline dates would represent a relaxation for those Class I areas. EPA believes the NPS's and FWS's request is necessary because it would be very difficult for those Federal Land Managers to make an informed decision regarding the most protective minor source baseline date for the Class I areas without such an analysis.

EPA is encouraged that the State appears willing to work with the Federal Land Managers in this redesignation process to ensure that the Clean Air Act protections for Montana's Class I areas are not compromised by the redesignation. We would appreciate your keeping us apprised of any future discussions with the Federal Land Managers and/or changes to your proposed redesignation plans. If you have any questions on this letter, please feel free to contact me at (303) 312-6004, or have your staff contact Vicki Stamper at (303) 312-6445.

Sincerely,



Larry Svoboda, Leader
Air Quality Planning and Management Unit

cc: Jan Sensibaugh, Permitting and Compliance Assistance Division, MT DEQ
Chuck Homer, Permitting and Compliance Assistance Division, MT DEQ
Bob Habeck, Planning, Prevention and Assistance Division, MT DEQ
Christine Shaver, Air Resources Division, NPS
Sandra Silva, Air Quality Branch, Fish and Wildlife Service



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AUG 30 2007

Ref: 8P-AR

David L. Klemp
Air Permitting Supervisor
Air & Waste Management Bureau
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Re: Montana 2003 Program Reviews

Dear Mr. Klemp:

The purpose of this letter is to respond to your inquiry about the final reports of the Title V and New Source Review program evaluations EPA conducted in May 2003. As you may know, the Title V program review was conducted in response to a 2002 Inspector General audit of EPA's oversight of States' Title V programs. As a result, EPA committed to review States' Title V programs by the end of the 2006 federal fiscal year. EPA also decided to conduct a review of States' NSR programs at the same time because it was expedient and because of EPA's regulatory obligation to oversee and evaluate the implementation of the construction permit programs approved for the States.

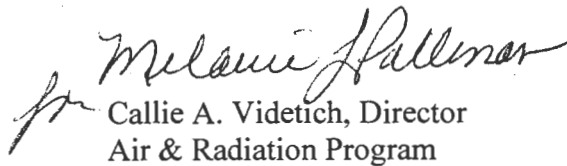
The main objectives of the program evaluations were to: identify and document strengths and good practices in well-managed programs that could be shared with other programs; identify areas with shortcomings; and seek States' input as to how EPA could assist the States to expedite their permitting processes and improve their overall programs to meet legislative mandates and other regulatory requirements.

Please find enclosed the final report of our review of Montana's Title V Operating Permit Program. We note that Montana's Title V program has undergone significant improvements in many important areas over the years. We look forward to continue working with the State in the areas that were identified as "needs to improve."

As you may recall, we provided a draft of the NSR evaluation report to you in 2004 and received your response and comments in a letter addressed to Catherine Collins dated September 23, 2004, in which you disagreed with some of the positions taken and/or conclusions reached by EPA at the time. These issues were never resolved and the NSR program evaluation draft report was never finalized.

If you have any questions, please contact me at (303) 312-6434 or have a member of your staff contact Christopher Ajayi of my staff at (303) 312-7015 or at ajayi.christopher@epa.gov

Sincerely,


Callie A. Videtich, Director
Air & Radiation Program

Enclosure

